

No. 10272

United States 16
Circuit Court of Appeals
For the Ninth Circuit.

SAN FERNANDO MISSION LAND COM-
PANY, a corporation,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

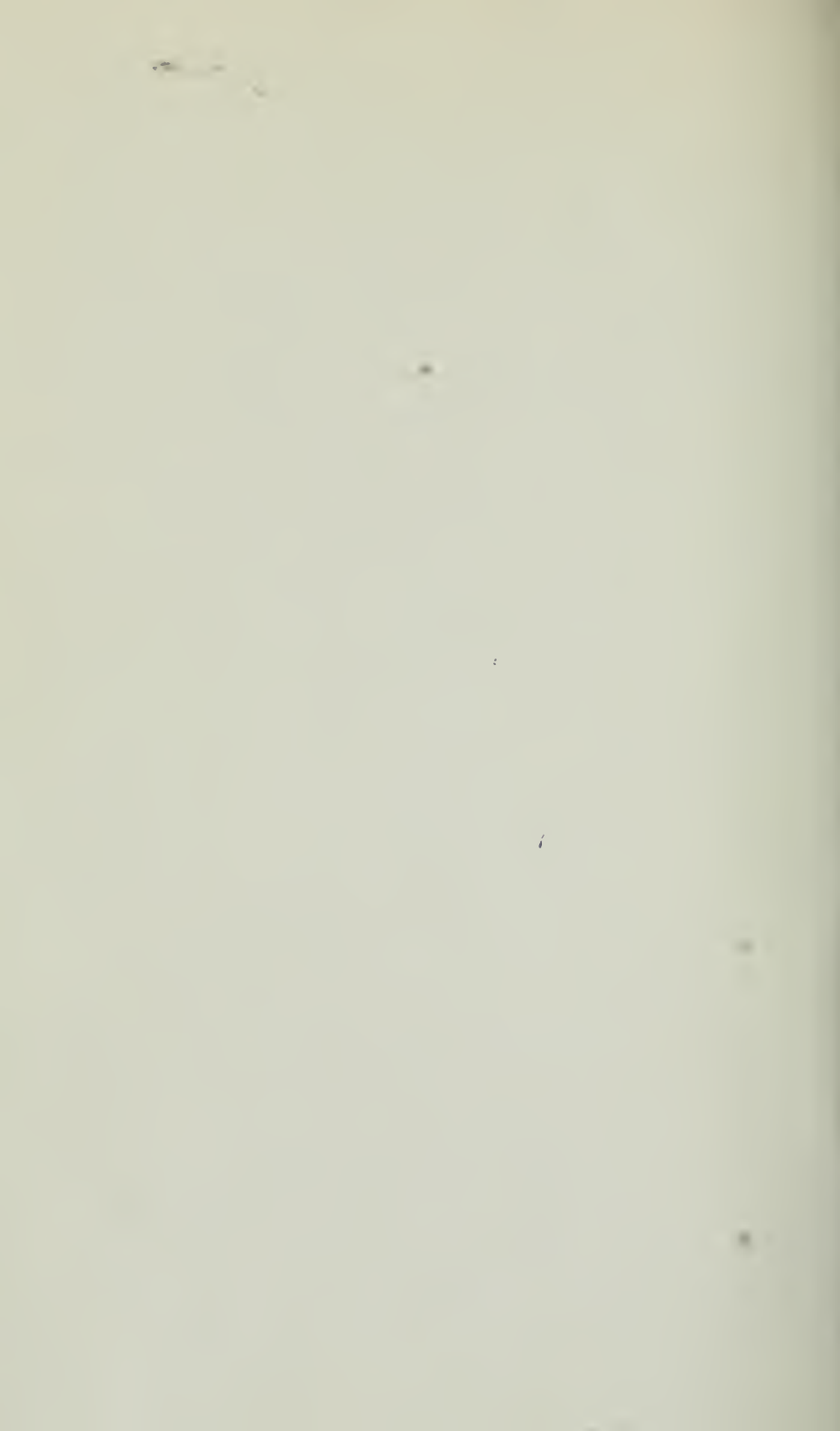
Transcript of the Record

Upon Petition to Review a Decision of the United
States Board of Tax Appeals

FILED

NOV - 3 1942

PAUL P. O'BRIEN,
CLERK



No. 10272

United States
Circuit Court of Appeals

For the Ninth Circuit.

SAN FERNANDO MISSION LAND COM-
PANY, a corporation,

Petitioner,

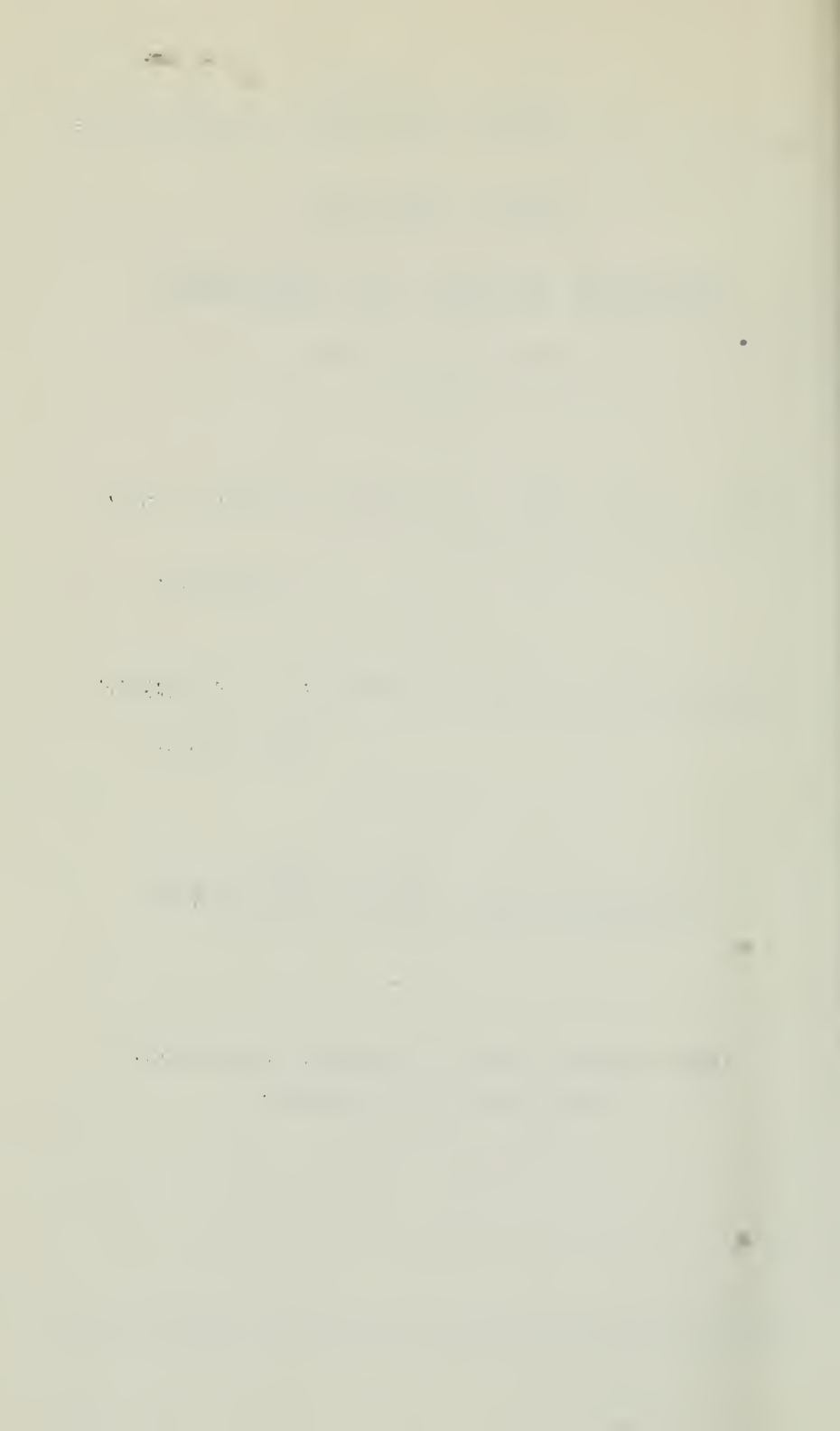
vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of the Record

Upon Petition to Review a Decision of the United
States Board of Tax Appeals



INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Answer to Petition.....	12
Appeal:	
Certificate of Clerk to Transcript of Record on	123
Points on Which Appellant Intends to Reply on	124
Certificate of Clerk to Transcript of Record on Appeal	123
<i>Decision</i>	<i>20</i>
Docket Entries	2
Findings of Fact.....	14
Findings of Fact and Opinion, Memorandum.	14
History of Proceedings.....	21
Memorandum Findings of Fact and Opinion.	14
Names and Addresses of Attorneys.....	1
Notice of Filing Petition for Review.....	43
Opinion	17
Order Denying Revision.....	32
Order to Send Up Original Exhibits.....	119

Petition for Redetermination of the Deficiency Set Forth by the Commissioner of Internal Revenue	4
Petition for Review (CCA).....	33
Petition for Revision and Review.....	21
Points on Which Appellant Intends to Rely on Appeal	124
Praecipe for Record.....	121
Statement of Evidence.....	45
Testimony:	
Witnesses for Petitioner:	
Hilker, Walter R.	
—direct	50
—cross	80
—redirect	89
—recross	90
—recalled, direct	115
—recalled, cross	115
Ingold, Reuben	
—direct	91
—cross	112
Exhibits for Petitioner:	
A—Letter and Statement from In- ternal Revenue Agent Dated Feb. 8, 1941	8

Docket No. 107149

SAN FERNANDO MISSION LAND CO.,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

APPEARANCES

For Taxpayer :

GEORGE R. OLINCY, C.P.A.

ERNEST ALLEN TOLIN, Esq.,

HARRY GRAHAM BALTER, Esq.,

For Comm'r. :

SAMUEL TAYLOR, Esq.

DOCKET ENTRIES

1941

May 5—Petition received and filed. Taxpayer notified. Fee paid.

“ 5—Copy of petition served on General Counsel.

“ 11—Answer filed by General Counsel.

“ 11—Request for hearing in Los Angeles, Calif., filed by General Counsel.

“ 14—Notice issued placing proceeding on Los Angeles calendar.

Service of answer and request made.

1941

Dec. 24—Hearing set Feb. 2, 1942 at Los Angeles, Calif.

1942

Feb. 6-9—Hearing had before Mr. Sternhagen on merits. Submitted. Appearance of Ernest A. Tolin, filed. Briefs due under the Rule.

Mar. 9—Transcript of hearing of Feb. 6, 1942 filed.

“ 9—Transcript of hearing of Feb. 9, 1942 filed.

“ 23—Brief filed by taxpayer.

“ 26—Brief filed by General Counsel.

“ 27—Copy of brief served on General Counsel.

Apr. 6—Reply brief filed by taxpayer. 4/6/42 copy served.

May 6—Motion to cite the *Magruder v. Washington, Baltimore and Annapolis Realty Corporation* case filed by General Counsel.

“ 7—Motion granted.

May 25—Memorandum findings of fact and opinion rendered, Sternhagen, Div. 10. Decision will be entered for the respondent. 5/26/42 copy served.

“ 25—Decision entered, Sternhagen, Div. 10.

Jun. 18—Motion for review of opinion and review by entire Board with petition for revision filed by taxpayer.

“ 19—Order denying revision entered.

“ 19—Order that motion for revision and review of the Memorandum Findings of Fact and Opinion of Div. 10 is denied and the motion in so far as it asks for review by the Board is denied, entered.

1942

Jul. 24—Notice to recognize Harry Graham Balter in the appeal to the 9th Circuit filed by taxpayer.

“ 24—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by taxpayer.

“ 24—Proof of service filed.

“ 24—Affidavit of service by mail of petition for review, substitution of counsel and notice of filing petition for review filed by taxpayer.

“ 25—Proof of service of notice of filing petition for review filed.

Aug. 31—Certified copy of order from the 9th Circuit enlarging the time to Oct. 3, 1942 for the filing of the transcript of record filed
[1*]

Sept. 9—Praecipe for record filed by taxpayer.

“ 9—Affidavit of service by mail filed by taxpayer.

“ 14—Certified copy of an order from the 9th Circuit requesting Board to transmit all of petitioner's exhibits 1 to 54 and all of respondent's exhibits A to M inclusive to this Court filed.

“ 15—Agreed statement of evidence filed. [2]

*Page numbering appearing at top of page of original certified Transcript of Record.

United States Board of Tax Appeals

Docket No. 107149

SAN FERNANDO MISSION LAND CO.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

PETITION

The above named petitioner hereby petitions for the redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols LA:IT:90D:EIS), dated February 8, 1941, and as a basis of this proceeding alleges as follows:

1. The petitioner is a California corporation with its principal office at 1031 South Broadway, Los Angeles, California. The return for the period here involved was filed with the Collector of Internal Revenue for the Sixth Collection District of the State of California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit "A") was mailed to the petitioner on February 8, 1941.

3. The taxes in controversy are income and excess-profits taxes for the calendar year 1938, and in the amount of \$12,544.20, of which amount \$12,246.64 is in controversy. [3]

4. The determination of taxes set forth in the said notice of deficiency is based upon the following errors:

(a) The determination that petitioner was subject to excess-profits tax for the calendar year 1938.

(b) The disallowance of Commissions Paid, in the sum of \$33,306.88, as a deduction from income from the calendar year 1938.

(c) The disallowance of Attorney's Fees, in the sum of \$250.00, as a deduction from income for the calendar year 1938.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) The petitioner was organized during December, 1904, for the principal purpose of subdividing and selling real estate. By the year 1922, the petitioner had disposed of the greater part of its land and thereupon became inactive. No property of petitioner was sold from January 1, 1927 to November 10, 1937; no directors meetings were held between February 2, 1927 and September 14, 1936; no stockholders' meetings were held for a period even longer. During the period from July 1, 1937 to June 30, 1938, the sole activities of petitioner consisted of liquidating two property holdings, maintaining its few remaining assets pending their sale and liquidation, and maintaining its corporate existence. During the period from July 1, 1937 to June 30, 1938, petitioner was not doing business within the [4] purview of Sections 601 and 602 of

the Revenue Act of 1938. The petitioner was not subject to capital stock tax for the year ended June 30, 1938. The petitioner was not subject to excess-profits tax for the calendar year 1938.

(b) The petitioner executed an oil and gas lease with the Shell Oil Company on November 25, 1938, covering 380.65 acres in unproven oil territory. Said lease provided for the payment of a bonus upon its execution of \$200.00 per acre, said bonus totalling \$76,130.00. The bonus represented all sums payable during the term of the lease, excluding royalties on oil and gas produced. The term of the lease was for 20 years, and for so long thereafter as lessee shall conduct drilling or producing operations, however, lease shall ipso facto terminate upon lessee's failure to commence drilling of a well within two years from date of lease, and failure to thereafter continue to develop the property in accordance with the lease terms. The petitioner retained Robert V. New to negotiate said lease and, upon its execution, to pay him a commission for his services so rendered based solely on the bonus received for said lease at time of execution. The commission so paid to Robert V. New amounted to \$33,306.88, said compensation being calculated solely on the aforesaid \$76,130.00 bonus received in 1938. The commission so paid to Robert V. New was paid for personal services rendered by him in 1938, was reasonable in amount, and was commensurate with the services so rendered by him. The entire commission so paid to

Robert V. New was a properly deductible expense for the calendar year 1938. [5]

(c) Petitioner retained George Emerson, Esq., Attorney-at-Law, to render services in the preparation of the oil and gas lease heretofore referred to for which he was paid a fee of \$250.00. The fee so paid to George Emerson was paid for his services rendered in 1938, was reasonable in amount, and was commensurate with the services so rendered by him. The attorney's fee so paid to George Emerson was a property deductible expense for the calendar year 1938.

Wherefore, the petitioner prays that this Board may hear the proceeding and determine that the deficiency due from the petitioner for the year 1938 should not be in excess of \$297.56.

GEORGE R. OLINCY

Counsel for Petitioner

1913 Wilshire Boulevard

Los Angeles, California [6]

(Duly Verified.) [7]

EXHIBIT "A"

Treasury Department
Internal Revenue Service
Twelfth Floor
U. S. Post Office and Court House
Los Angeles, California

Form 1232
Office of
Internal Revenue Agent
In Charge
Los Angeles Division
LA:IT:90D:EIS

SN-IT-3

Feb. 8, 1941.

San Fernando Mission Land Co.
Room 305
1031 South Broadway
Los Angeles, California

Sirs:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1938 discloses a deficiency of \$4,508.56 and that the determination of your excess-profits tax liability for the year mentioned discloses a deficiency of \$8,035.64 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, Calif., for the attention of L. A.: Conf. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner,

By (Signed) GEORGE D. MARTIN

Internal Revenue Agent
in Charge

Enclosures:

Statement

Form of waiver.

EIS/hfk [8]

STATEMENT

LA:IT:90D:EIS

San Fernando Mission Land Company
 Room 305,
 1031 South Broadway
 Los Angeles, California

TAX LIABILITY FOR THE TAXABLE YEAR ENDED
 DECEMBER 31, 1938

	Liability	Assessed	Deficiency
Income Tax	\$ 9,723.12	\$ 5,214.56	\$ 4,508.56
Excess-Profits Tax	8,035.64	None	8,035.64
Total.....	\$17,758.76	\$ 5,214.56	\$12,544.20

In making this determination of your income tax and excess-profits tax liability, careful consideration has been given to the report of examination dated July 16, 1940; to your protest dated August 12, 1940; and to the statements made at the conferences held on August 26, 1940 and December 5, 1940.

It is held that under sections 601 and 602 of the Revenue Act of 1938 you are subject to the excess-profits tax for the taxable year 1938. Accordingly, your contention that the corporation is exempt from the excess-profits tax is denied.

A copy of this letter and statement has been mailed to your representatives, Messrs. W. H. Ingold and G. R. Olincy, c/o Ingold and Olincy, 1913 Wilshire Boulevard, Los Angeles, California, in accordance with the authority contained in the power

of attorney executed by you and on file with the Bureau.

ADJUSTMENTS TO NET INCOME

Net income as disclosed by return.....		\$31,603.36
Unallowable deductions and additional income:		
(a) Commissions	\$33,306.88	
(b) Attorney fees	250.00	
(c) Rental income	1,803.40	35,360.28
	<hr/>	<hr/>
Net income adjusted.....		\$66,963.64
		[9]

Explanation of Adjustments

(a) and (b). The deduction of \$33,306.88 as an ordinary and necessary business expense, representing the commission paid for the securing of an oil and gas lease, and the deduction of \$250.00, representing the payment of an attorney fee for the drawing of said lease, are held to be capital expenditures returnable through depletion and not allowable as deductions under the provisions of section 23(a) of the Revenue Act of 1938.

(c) Represents lease rentals collected in advance in 1938 without restriction as to its use, disposition or enjoyment.

COMPUTATION OF TAX

Excess-Profits Tax	
Taxable net income.....	\$66,963.64
No value of capital stock declared in your capital stock tax return for the year ended June 30, 1938.	
Net income subject to excess-profits tax.....	\$66,963.64
Excess-profits tax:	
12% of \$66,963.64.....	\$ 8,035.64
Excess-profits tax assessed:	
Original, account No. 400734.....	None
	<hr/>
Deficiency of excess-profits tax.....	\$ 8,035.64
Income Tax	
Taxable net income.....	\$66,963.64
Less:	
Excess-profits tax	8,035.64
	<hr/>
Adjusted net income.....	\$58,928.00
Tax at 19% of \$58,928.00.....	\$11,196.32
Less:	
2½% of dividends-paid credit.....	1,473.20
	<hr/>
Total income tax	\$ 9,723.12
Income tax assessed:	
Original 1939 list, account No. 400734.....	5,214.56
	<hr/>
Deficiency of income tax.....	\$ 4,508.56

[Endorsed]: U.S.B.T.A. Filed May 5, 1941. [10]

[Title of Board and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the

above-named taxpayer, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the taxes in controversy are income and excess-profits taxes for the calendar year 1938; denies the remainder of the allegations contained in paragraph 3 of the petition.

4. (a) to (c), inclusive. Denies the allegations of error contained in subparagraphs (a) to (c), inclusive, of paragraph 4 of the petition.

5. (a) to (c), inclusive. Denies the allegations of fact contained in subparagraphs (a) to (c), inclusive, of paragraph 5 of the petition. [11]

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore it is prayed that the determination of the Commissioner be approved.

[Signed] J. P. WENCHEL,
FTH
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

ALVA C. BAIRD,
Division Counsel.
FRANK T. HORNER,
SAMUEL TAYLOR,
Special Attorneys,
Bureau of Internal Revenue.

ST/fat 6/5/41

[Endorsed]: USBTA Filed Jun 11, 1941. [12]

[Title of Board and Cause.]

MEMORANDUM FINDINGS OF FACT AND OPINION

The Commissioner determined deficiencies for 1938 of \$4,508.56 in income tax and \$8,035.64 in excess profits tax. Petitioner assails (1) the determination that it was subject to excess profits tax, contending that it was not carrying on or doing business; (2) the disallowance of a deduction for commission paid for negotiating an oil lease for petitioner as lessor; and (3) the disallowance of the deduction of an attorney's fee for drawing the lease.

FINDINGS OF FACT

1. Petitioner is a California corporation with principal office at Los Angeles, California, and filed its 1938 income tax return with the Collector there. It was organized in 1904 to buy, develop and sell land; it acquired over 16,000 acres about fifteen miles from the center of Los Angeles, and engaged actively and successfully in the development and sale of this tract. In 1918 it declared a dividend of \$1,000,000 which it paid by a distribution of lands among its shareholders. Thereafter it donated some land to the city for parks, restricted its business activity, reduced its capitalization from \$1,000,000 to \$100,000, and distributed \$1,250,000 in a series of dividends, the last being one of \$100,000 paid on January 29, 1923. Few assets remained, and share-

holders displayed little interest in the corporation, but it was not dissolved. After a meeting on February 2, 1927, the directors did not again meet for nearly a decade. On state franchise tax returns, petitioner was described as "practically liquidated."

Petitioner's remaining properties after 1930 consisted of a thirty-five acre grove of orange and lemon trees, 138 acres of unplotted hill lands, reservations of mineral rights in some 3,000 acres of land previously sold, and a very small amount of cash. The grove was in poor condition, unprofitably operated for many years, and in 1937 the trees were uprooted and it was abandoned to the state for unpaid taxes. The hill lands lying some twenty miles from the center of Los Angeles were without improvements or available water. Of the original acreage, they constituted a part for which no buyer was found. The grove and these lands were carried on petitioner's books at \$52,500 and \$13,800, respectively. The reservations of mineral rights were carried at \$1.00. In selling its real estate, petitioner had in some cases reserved mineral rights and as in early years had authorized its officers to execute oil and gas leases. The board of directors in 1925 gave consideration to proposals for oil leases, and at the meeting on February 2, 1927, they considered several proposals and ratified a release of the reserved rights in certain land for a consideration of \$2,940. At the same time they resolved to make no more such releases "for the present, at least."

After 1930, petitioner operated the grove at a continual loss; in 1932 it made one sale of realty for about \$1,500; in 1935 it rented pasture for \$75, and in 1936 it received \$7,500 for release of oil reservations and for a lot. Taxes [13] and expenses exceeded income except in 1936, and the balance sheet constantly showed a deficit of about \$40,000 during the period. In 1936 no oil had been found on or near petitioner's properties and no survey for oil had been made. At the instigation of the president of one of petitioner's creditors, the directors met on September 14, 1936, and elected him president. He entered into negotiations for the leasing of oil rights. A lease, authorized by the directors and placed in escrow on November 10, 1937, was not delivered because of the lessee's failure to perform conditions. On his initiative, the grove was abandoned in the fall of 1937.

During the fiscal year July 1, 1937—June 30, 1938, petitioner received \$51.87 in the sale of fruit; \$50 from the rental of pasture; and two other small items. From the sale of 4.75 acres of the hill lands it realized a profit of \$1,890 and in the sale of reserved oil rights it received \$1,180. Its total income was \$3,270.66, and its expenses and taxes were \$2,897.34. On March 16, 1938, petitioner made a twenty-year lease of oil rights for royalties which are being paid. On August 26, 1938, it made a lease of oil rights for \$20,000 and royalties from oil as long as produced.

Petitioner received income from its leases in 1938, 1939 and 1940, and declared dividends in each of those years.

In the fiscal year ending June 30, 1938, petitioner was carrying on and doing business.

2. On August 26, 1938, petitioner employed Robert V. New to promote and negotiate oil leases. His compensation was to be based on the amount of rental. Through New's efforts, petitioner made a lease of oil rights on November 25, 1938, for a minimum period of twenty years, receiving \$76,130 and the right to a royalty. Pursuant to the employment agreement, petitioner paid New \$33,306.88 for negotiating this lease and paid an attorney \$250 for preparing the instrument.

OPINION

Sternhagen: 1. The petitioner's claim that in the capital stock tax year ending June 30, 1938, it was not carrying on or doing business rests upon the view that its activities of that period were incidental to a long-existing intention to liquidate and were so slight as to be negligible and hence should, for present purposes, be disregarded. As to the intention to liquidate, whatever may have been said as to its significance under earlier decisions must now be revised in view of *Magruder v. Washington, Baltimore & Annapolis Realty Corporation*,U.S.....(April 13, 1942); for that decision held a corporation which was expressly formed for liquidation to be subject to the capital stock

tax. In the "nebulous field of confusion" affecting this subject, Article 43 (a)(5) of Regulations 64 was held to be controlling, and in that article liquidation was not per se enough to support exemption.

The evidence shows that the petitioner was not dormant, as it contends. During the taxable year, it owned an orange grove from which it derived some income and upon which it paid expenses. The fact that the grove was abandoned during the tax year can not overcome the fact that while the activities lasted in the tax year they were business activities. It owned 133.25 acres of unplotted lands which remained of the 16,000 acres which it originally purchased, and in the tax year it sold 4.75 acres at a profit of \$1,890. It held reserved oil rights on 3,000 acres the surface of which it had previously sold, and in the tax year it sold the oil rights on one piece of land at a profit of \$1,180. It made oil leases on two pieces of property. It rented pasture land. All these activities were relatively unimportant in comparison with those of earlier years, but they can not be disregarded. [14] Considered by themselves, they are evidence of carrying on business by the corporation as best it could under the circumstances existing at the time. That it was ready to do whatever business came its way and make whatever current profit was available is shown by the evidence of substantial transactions later in 1938 involving oil leases for long terms. This activity was not a departure from earlier

plans and practices; similar attempts were made in the tax year. At the meeting of September 14, 1936, it considered leasing its oil rights and thereafter actively sought to do so.

We hold that petitioner was carrying on or doing business in the year ending June 30, 1938, and that it was properly determined to be subject to excess profits tax for the calendar year 1938. Cf. *United States v. Trust No. B.I. 35*, 107 Fed. (2d) 22; *Allen v. Rogan*, 39 Fed. Supp. 424.

2. The Commissioner held that the \$33,306.88 commission paid to New out of the bonus upon the execution of the twenty-year oil lease was not deductible as an ordinary and necessary expense in carrying on trade or business. We think the determination must be sustained. The payment was an inherent cost to petitioner, as lessor, of a contract expected to yield royalty income for a period of years, and was not an ordinary expense of operation. *Bonwit Teller & Co.*, 17 B.T.A. 1019, affirmed on this point, 53 Fed. (2d) 381.

3. For the same reason, the deduction of the attorney's fee of \$250 for drawing the lease was correctly disallowed.

Decision will be entered for the respondent.

Entered: May 25, 1942.

[Seal] [15]

United States Board of Tax Appeals
Washington

Docket No. 107149

SAN FERNANDO MISSION LAND COMPANY,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

In accordance with the Board's Memorandum Findings of Fact and Opinion, entered May 25, 1942, it is

Ordered and Decided that there are deficiencies for 1938 of \$4,508.56 in income tax and \$8,035.64 in excess profits tax.

Enter:

Entered May 25, 1942.

[Seal] (s) J. M. STERNHAGEN,
Member. [16]

[Title of Board and Cause.]

PETITION FOR REVISION AND
REVIEW

To the Honorable Chairman of the United States
Board of Tax Appeals and the Members
Thereof:

HISTORY OF PROCEEDINGS

Your petitioner, through its attorneys named below, respectfully represent:

1. That in accordance with the law and procedure therein provided, your petitioner duly filed a petition with the Board, said petition bearing the docket number above given, against deficiency proposed by the respondent, and issue was had thereon.

2. That among the issues in the pleadings aforesaid, were the following:

a. Whether or not the petitioner was "carrying on or doing business" at any time during [17] the period from July 1, 1937 to June 30, 1938.

b. Whether or not the commission paid to Robert V. New in the sum of \$33,306.88 for services in negotiating the lease with the Shell Oil Company is a properly deductible expense in the year 1938.

c. Whether or not the attorney's fee paid to George H. Emerson in the sum of \$250.00 for assisting in preparing the lease with the

Shell Oil Company is a properly deductible expense in the year 1938.

PETITION FOR REVISION

Your petitioner respectfully prays that the Board will revise and amend the findings of fact of its division in the following particulars:

1. That the petitioner was not "carrying on or doing business" in the fiscal year ending June 30, 1938.
2. That the commission paid to Robert V. New is a deductible expense in the year 1938.
3. That the attorney's fee paid to George H. Emerson is a deductible expense in the year 1938. [18]

PETITION FOR REVIEW

Your petitioner, believing that the opinion rendered by the division of the Board in these proceedings is at variance with the facts and with the law therein provided, requests that the entire opinion be reviewed, and if found proper, reversed.

In order to facilitate and clarify this petition, the opinion rendered by your division is reviewed herewith but your petitioner nevertheless requests and feels that it is entitled to have the arguments presented in its Brief and Reply Brief, heretofore filed with the Board, studied in connection with this petition.

ISSUE OF WHETHER OR NOT THE PETITIONER WAS "CARRYING ON OR DOING BUSINESS" AT ANY TIME DURING THE PERIOD FROM JULY 1, 1937 TO JUNE 30, 1938

Errors of Fact

The facts supporting this issue are not in controversy, and the introduced oral testimony and documentary evidence fully reflect them for your review. In making the Finding of Fact that the petitioner was "carrying on and doing business in the fiscal year ending June 30, 1938", your division disregarded and gave no consideration to the following material evidence:

1. That the petitioner had entirely discontinued the business for which it was incorporated. (R. 80)
[19]

2. That the activities of the petitioner during said fiscal year were incidental to a long-existing intention of the petitioner to liquidate. (Petitioner's Exhibits No. 39 to 49, both inclusive, R. 56 and 104-106)

3. That the petitioner was dormant over a period of many years prior to June 30, 1938, its activities during said period being so slight and incidental as to be disregarded in determining this issue. (R. 58, 81, 105, 106)

4. That the oil leasing activities and income to petitioner subsequent to June 30, 1938 arose out of events occurring after July 1, 1938, and were un-

foreseen by the petitioner or its officers on or prior to June 30, 1938. (R. 124 and 126)

Errors of Law

In rendering its opinion in this cause, your division based its decision on the following interpretation of the United States Supreme Court decision in *Magruder v. Washington, Baltimore & Annapolis Realty Corporation U.S.* (April 13, 1942), namely:

That the Supreme Court has held Article 43(a)(5) of Regulations 64 to be valid and that the term "liquidation" used therein means liquidations of every kind. Accordingly, liquidation per se is deemed to be "carrying on or doing business".

The petitioner herein could be held to be not "doing business" only if it were completely dormant, and any activity whatsoever, no matter [20] how slight or for what purpose, would be sufficient to classify it as "doing business".

It is respectfully submitted, that the interpretation so placed by your division was erroneous in law and, accordingly, should be reviewed and reversed.

The *Magruder* case, by holding that Article 43(a)(5) of Regulations 64 was valid, inferentially approved the validity of the remainder of Article 43 which is also interpretative of the term

of the statute, and does not hold that the term "liquidation" means liquidations of every kind.

Article 43(a)(5) of Regulations 64 provides as follows:

"Art. 43. Illustrations.—(a) General—In general 'doing business' includes any activities of a corporation whether it engages in——

* * * * *

"(5) the orderly liquidation of property by negotiating sales from time to time as opportunity and judgment dictate and distributing the proceeds as liquidation is effected—for example, the liquidation of an estate, or of properties taken over from another corporation, or of the shareholders' fractional interests in particular property;"

The above quoted Article 43(a)(5) is not applicable to the facts in the instant case since the petitioner's remaining assets were not received from an estate, taken over from another corporation, or of shareholders' fractional interests in particular property. The meaning of the above Article, as interpreted by the Magruder decision, covers orderly liquidation which is the very purpose for which the corporation is organized. In the instant case, the petitioner was organized to buy, develop and sell [21] land, it abandoned its purposes many years ago, and after years of absolute inactivity then undertook to liquidate its few remaining assets.

It is respectfully submitted that the facts in the within cause come squarely under Article 43(b)(1) of Regulations 64, wherein the Commissioner defines activities of a corporation not considered as "doing business". In view of the validity of this Article and in view of its applicability to the within facts, it affords the natural yardstick to measure the case at bar, rather than Subsection (a)(5).

Article 43(b)(1), Treasury Regulations 64.

"(b) Exceptions—Ordinarily the exceptions to 'doing business' are restricted to limited activities of a corporation. For example——

(1) A corporation is not subject to the tax although incorporated for the purpose of doing business, if it has retired from the business for which it was organized and has reduced its activities to the mere ownership and holding of property, the distribution of its avails, and doing only such acts as are necessary to the maintenance of its corporate existence and the private management of its internal affairs."

The Magruder case does not change the effect of prior decisions but, on the contrary, reaffirms the principle that an important element in determining the issue of "doing business" is whether the corporation is carrying on the purposes for which it was organized. In the Magruder case, the Court differentiates the facts from those of Von Baum-

bach, Collector v. Sargent Land Co., 242 U. S. 503, and does not reverse that decision. In the Von Baumbach case (*supra*), at page 516, the [22] Supreme Court laid down the test to be applied in deciding the question of "doing business" as follows:

"It is evident, from what this court has said in dealing with the former cases, that the decision in each instance must depend upon the particular facts before the court. The fair test to be derived from a consideration of all of them is between a corporation which has reduced its activities to the owning and holding of property and the distribution of its avails and doing only the acts necessary to continue that status, and one which is still active and is maintaining its organization for the purpose of continued efforts in the pursuit of profit and gain and such activities as are essential to those purposes."

In the cause at issue herein, we find that the petitioner conforms to the above general test in that it still held but a small fraction of its original holdings, and that its sole activities for some 15 years prior to July 1, 1937 and during the fiscal year ending June 30, 1938 were holding and maintaining its properties while attempting their sale, and maintaining its corporate existence.

Again, the Supreme Court in *Edwards v. Chile Copper Co.* 270 U. S. 452, stated as follows:

"The exemption 'when not engaged in business' ordinarily would seem pretty nearly

equivalent to when not pursuing the ends for which the corporation was organized, in the cases where the end is profit."

The above definition exactly fits the facts in the cause at issue herein.

In view of the above, reference is made to the cases cited in Petitioner's Brief which are on all fours with the instant cause and which, as the above discussion illustrates, are not in conflict with or affected by the Magruder decision: [23]

Union Land & Timber Co. v. United States 65 Ct. Cl. 129, cited on pages 18-22 in Petitioner's Brief.

Estate of Isaac G. Johnson v. United States 37 F. Supp. 617, cited on pages 22-23 of Petitioner's Brief.

The Magruder case was decided by the Supreme Court after Petitioner's Brief and Reply Brief were drawn so that the foregoing comment is the first opportunity petitioner has had concerning this citation.

The fact that the Board of Tax Appeals has not heretofore passed on the questions herein presented suggests that this case is of sufficient importance as a precedent that it should be a decision by the full Board. The issue of "carrying on or doing business" for capital stock tax purposes normally is tried in the District Courts and the petitioner has been unable to find any expression on this subject in any of the reports of decisions of your Board.

ISSUES OF WHETHER OR NOT COMMISSION AND ATTORNEY'S FEE PAID ARE DEDUCTIBLE EXPENSES

Errors of Fact

The facts supporting this issue are not in controversy, and the introduced oral testimony and documentary evidence fully reflect them for your review. In making the Finding of Fact, your division failed to find or consider the following:

1. The division apparently misunderstood the situation as to the lease. The \$76,130.00 bonus paid in 1938 bought the following for lessee: [24]

A right to possess under the lease for two years, and if a certain thing be done during that time, viz, commence drilling a well, then, upon actual continuous operations and payment of royalty, if and when oil be produced, to continue in possession for a full term of 20 years. Thus it is apparent that lessee enjoyed a certain tenure for two years only, with an option, exercisable by continuous drilling of wells over the entire period, to enjoy a longer term. (Petitioner's Exhibit No. 29)

2. That the land so leased was unproven oil territory and that no oil has been discovered thereon to date. (R. 138)

Errors by Law

In rendering its opinion in this cause, your division held that the commission and attorney's fee paid were costs to petitioner in acquiring a contract

expected to yield royalty income for a period of years. It is respectfully submitted that, since the land was unproven oil territory, petitioner had no assurance of royalty income in the future and in view of the contingencies and speculation inherent in finding oil on the leased property, the decision on these issues should properly be that they are deductible from the only known income to petitioner under the lease, namely, the lease bonus of \$76,130.00 received in 1938.

Applying the theory of your division decision to the [25] facts to this case, we find that the petitioner would be required to report as 1938 income the sum of \$76,130.00 and is entitled to percentage depletion of $27\frac{1}{2}\%$ of such income, or \$20,935.75. It has incurred expenses for commission and attorney fee in the sum of \$33,556.88 which would not be deductible. Therefore, if oil is not found the petitioner would be required to reflect the depletion as income and would be entitled to deduct the expenses in the year of cancellation of said lease. Since the expenses exceed the depletion by approximately \$13,000.00, the effect of the treatment of this transaction in the manner suggested by your division, would be that income of \$13,000.00 more than the actual total profit earned would be required to be reported for income tax purposes. It is respectfully submitted that this legal theory violates the whole principle of the income tax law of properly taxing income through a distorted and unnatural treatment of this transaction.

Your Board has not previously passed upon this legal principle relating to commissions and attorney's fees paid on oil leases, to the petitioner's knowledge, but has passed on principles similar in theory, and has consistently ruled that possible but not certain events in the future are to be disregarded:

Estate of George B. Leonard Holding Corporation
26 B.T.A. 46
Crossett Timber & Development Company, Inc. 29
B.T.A. 705 [26]

Your petitioner asserts that, in its judgment, this case cannot properly be disposed of without giving further consideration to the questions herein presented. For these, and other reasons as are more fully disclosed in your petitioner's Brief and Reply Brief heretofore, it respectfully urges that the findings of your division be revised and that the conclusion reached thereon be reviewed by the entire Board.

Respectfully submitted,

GEORGE R. OLINCY

1913 Wilshire Boulevard
Los Angeles, California
Counsel for Petitioner.

Of Counsel:

ERNEST A. TOLIN

Los Angeles, California.

[Endorsed]: USBTA Filed Jun. 18, 1942. [27]

[Title of Board and Cause.]

ORDER DENYING "REVISION"

Having considered the petitioner's Motion and Petition for Revision filed June 18, 1942, and finding that they contain nothing which has not been heretofore fully considered and disposed of in the Memorandum Findings of Fact and Opinion entered May 25, 1942, the motion and petition are Denied.

[Seal] (Signed) J. M. STERNHAGEN,
Member.

Dated June 19, 1942. [28]

[Title of Board and Cause.]

ORDER

The petitioner on June 18, 1942, filed a motion for revision and review of the Memorandum Findings of Fact and Opinion of Division No. 10 (Sternhagen). The motion in so far as it asks for revision has been denied by Division No. 10. The motion in so far as it asks for review by the Board is hereby denied.

[Seal] (Signed) J. E. MURDOCK,
Chairman.

Dated—Washington, D. C., June 19, 1942. [29]

[Title of Board and Cause.]

PETITION FOR REVIEW BY THE UNITED
STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

I
JURISDICTION

San Fernando Mission Land Company, your petitioner, respectfully petitions this Honorable Court to review the decision of the United States Board of Tax Appeals, entered on the 25th day of May, 1942, and finding a deficiency in excess profits taxes due from the petitioner for the calendar year 1938, in the amount of \$8,035.64.

Your petitioner is a corporation organized under the laws of the State of California, having its principal office and place of business at Los Angeles, California.

The return of excess profits taxes for the period herein involved, was filed with the Commissioner of Internal Revenue for the Sixth Collection District, in the City of Los Angeles, [30] State of California, which is located within the jurisdiction of the Circuit Court of Appeals for the Ninth Judicial Circuit.

Jurisdiction in this court to review the decision of the United States Board of Tax Appeals aforesaid, is founded on Internal Revenue Code Section 1141, (a) and (b) (1).

II

NATURE OF CONTROVERSY

The petitioner, on the 2nd day of May, 1941, filed with the United States Board of Tax Appeals, its petition requesting a re-examination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols LA:IT:90D:EIS), dated February 8, 1941, in the amount of \$4,508.56 in income taxes, and \$8,035.64 in excess profits taxes, for the calendar year 1938.

The issues to be determined by the United States Board of Tax Appeals were set out in said petition and in the answer of the Commissioner filed thereto. This case was heard before the Honorable John M. Sternhagen, at Los Angeles, California, on February 6th, 1942.

On May 25th, 1942, the United States Board of Tax Appeals entered a "Memorandum Findings of Fact and Opinion" which contained findings of fact as follows: [31]

III

FINDINGS OF FACT

The Board of Tax Appeals made the following Findings of Fact:

"1. Petitioner is a California corporation with principal office at Los Angeles, California, and filed its 1938 income tax return with the Collector there. It was organized in 1904 to buy, develop and sell land; it acquired over

16,000 acres about fifteen miles from the center of Los Angeles, and engaged actively and successfully in the development and sale of this tract. In 1918 it declared a dividend of \$1,000,000 which it paid by a distribution of lands among its shareholders. Thereafter it donated some land to the city for parks, restricted its business activity, reduced its capitalization from \$1,000,000 to \$100,000, and distributed \$1,250,000 in a series of dividends, the last being one of \$100,000 paid on January 29, 1923. Few assets remained, and shareholders displayed little interest in the corporation, but it was not dissolved. After a meeting on February 2, 1927, the directors did not again meet for nearly a decade. On state franchise tax returns, petitioner was described as 'practically liquidated.'

"Petitioner's remaining properties after 1930 consisted of a thirty-five acre grove of orange and lemon trees, 138 acres of unplotted hill lands, reservations of mineral rights in some 3,000 acres of land previously sold, and a very small amount of cash. The grove was in poor condition, unprofitably operated for many years, and in 1937 the trees were uprooted and it was abandoned to the state for unpaid taxes. The hill lands lying some twenty miles from the center of Los Angeles were without improvements or available water. Of the original acreage, they constituted a part for which no buyer was found. The grove and these lands were car-

ried on petitioner's books at \$52,500 and \$13,800, respectively. The reservations of mineral rights were carried at \$1.00. In selling its real estate, petitioner had in some cases reserved mineral rights and as in early years had authorized its officers to execute oil and gas leases. The board of directors in 1925 gave consideration to proposals for oil leases, and at the meeting on February 2, 1927, they considered several proposals and ratified a release of the reserved rights in certain land for a consideration of \$2,940. At the same time they resolved to make no more such releases 'for the present at least.' [32]

"After 1930, petitioner operated the grove at a continual loss; in 1932 it made one sale of realty for about \$1,500; in 1935 it rented pasture for \$75, and in 1936 it received \$7,500 for release of oil reservations and for a lot. Taxes and expenses exceeded income except in 1936, and the balance sheet constantly showed a deficit of about \$40,000 during the period. In 1936 no oil had been found on or near petitioner's properties and no survey for oil had been made. At the instigation of the president of one of petitioner's creditors, the directors met on September 14, 1936, and elected him president. He entered into negotiations for the leasing of oil rights. A lease, authorized by the directors and placed in escrow on November 10, 1937, was not delivered because of the lessee's fail-

ure to perform conditions. On his initiative, the grove was abandoned in the fall of 1937.

“During the fiscal year July 1, 1937—June 30, 1938, petitioner received \$51.87 in the sale of fruit; \$50 from the rental of pasture; and two other small items. From the sale of 4.75 acres of the hill lands it realized a profit of \$1,890 and in the sale of reserved oil rights it received \$1,180. Its total income was \$3,270.66, and its expenses and taxes were \$2,897.34. On March 16, 1938, petitioner made a twenty-year lease of oil rights for royalties which are being paid. On August 26, 1938, it made a lease of oil rights for \$20,000 and royalties from oil as long as produced.

“Petitioner received income from its leases in 1938, 1939 and 1940, and declared dividends in each of those years.

“In the fiscal year ending June 30, 1938, petitioner was carrying on and doing business.

“2. On August 26, 1938, petitioner employed Robert V. New to promote and negotiate oil leases. His compensation was to be based on the amount of rental. Through New's efforts, petitioner made a lease of oil rights on November 25, 1938, for a minimum period of twenty years, receiving \$76,130 and the right to a royalty. Pursuant to the employment agreement, petitioner paid New \$33,306.88 for negotiating this lease and paid an attorney \$250 for preparing the instrument.” [33]

IV

OPINION

Based on these Findings of Fact, the Board of Tax Appeals rendered the following opinion:

“1. The petitioner’s claim that in the capital stock tax year ending June 30, 1938, it was not carrying on or doing business rests upon the view that its activities of that period were incidental to a long-existing intention to liquidate and were so slight as to be negligible and hence should, for present purposes, be disregarded. As to the intention to liquidate, whatever may have been said as to its significance under earlier decisions must now be revised in view of *Magruder v. Washington, Baltimore & Annapolis Realty Corporation*, U. S. (April 13, 1942); for that decision held a corporation which was expressly formed for liquidation to be subject to the capital stock tax. In the ‘nebulous field of confusion’ affecting this subject, Article 43 (a) (5) of Regulations 64 was held to be controlling, and in that article liquidation was not per se enough to support exemption.

“The evidence shows that the petitioner was not dormant, as it contends. During the taxable year, it owned an orange grove from which it derived some income and upon which it paid expenses. The fact that the grove was abandoned during the tax year cannot overcome the fact that while the activities lasted in the

tax year they were business activities. It owned 133.25 acres of unplotted land which remained of the 16,000 acres which it originally purchased, and in the tax year it sold 4.75 acres at a profit of \$1,890. It held reserved oil rights on 3,000 acres the surface of which it had previously sold, and in the tax year it sold the oil rights on one piece of land at a profit of \$1,180. It made oil leases on two pieces of property. It rented pasture land. All these activities were relatively unimportant in comparison with those of earlier years, but they cannot be disregarded. Considered by themselves, they are evidence of carrying on business by the corporation as best it could under the circumstances existing at the time. That it was ready to do whatever business came its way and make whatever current profit was available is shown by the evidence of substantial transactions later in 1938 involving oil leases for long terms. This activity was not a departure from earlier plans and practices; similar attempts were made in the tax year. At the meeting of September 14, 1936, it considered leasing its oil rights and thereafter actively sought to do so. [34]

“We hold that petitioner was carrying on or doing business in the year ending June 30, 1938, and that it was properly determined to be subject to excess profits tax for the calendar year 1938. Cf. *United States v. Trust No. B. I. 35*,

107 Fed. (2d) 22; *Allen v. Rogan*, 39 Fed. Supp. 424. . . .”

(Balance of Opinion relates to issues not covered in this Petition for Review.)

V

LIMITATION OF ISSUES ON APPEAL

Attention is directed to the fact that in its petition for re-examination of deficiency filed with the Board of Tax Appeals, petitioner charged the Commissioner with three errors in determination of taxes, namely:

1. The determination that petitioner was subject to excess profits taxes for the calendar year 1938;

2. The disallowance of commissions paid, in the sum of \$33,306.88, as a deduction from income for the calendar year 1938; and

3. The disallowance of attorney's fees, in the sum of \$250.00, as a deduction from income for the calendar year 1938.

The Board of Tax Appeals, in its Memorandum Findings of Fact and Opinion, and its Decision, both dated May 25th, 1942, ruled against petitioner on all three issues.

Without in any way admitting that its position as to points 2 and 3 has been incorrect, petitioner nevertheless [35] is abandoning these two points, as far as this appeal is concerned, for the practical reason that the Board's Opinion so treats the claimed expenses that the deduction is not com-

pletely disallowed but merely deferred to a subsequent year. No oil has been found on the petitioner's property under lease and the leases will, in all probability, be cancelled in the near future. As a result, the deduction for the expenses under Issues 2 and 3 will then be allowable under the Board's decision.

VI

DESIGNATION OF COURT OF REVIEW

The said San Fernando Mission Land Company, being aggrieved by the Findings of Fact contained in the "Memorandum Findings of Fact and Opinion" of the Board of Tax Appeals, and by its Decision entered pursuant thereto, desires to obtain a review thereof by the United States Circuit Court of Appeals for the Ninth Circuit, petitioner being a corporation duly organized and existing under and by virtue of the laws of the State of California, with its principal office and place of business in the City of Los Angeles, State of California, and having filed its excess profits return for the calendar year 1938 with the Collector of Internal Revenue, at Los Angeles, California. [36]

VII

ASSIGNMENTS OF ERROR

The petitioner assigns as error, the following acts and omissions of the Board of Tax Appeals:

1. The determination that petitioner was sub-

ject to excess profits taxes for the calendar year 1938.

2. The failure to find that in the capital stock tax year ending June 30, 1938, petitioner was not "carrying on or doing business" within the meaning of the applicable statutes and regulations, and decisions interpreting said statutes and regulations.

3. The failure to find that the petitioner's activities during the period of July 1, 1937, to June 30, 1938, inclusive, was not the carrying on and doing business for profit but rather for liquidation.

4. The misapplication by the Board to the facts in the case at bar of the decision of the Supreme Court of the United States in *Magruder v. Washington, Baltimore and Annapolis Realty Corporation*, decided April 13, 1942, reported in 86 L. Ed. Advance Opinions 858.

5. The failure of the Board to apply to the petitioner the benefits of the exemptions provided for in Article 43 (b) of Regulation 64 (1938 Edition).

HARRY GRAHAM BALTER,

639 South Spring St., Los Angeles, California, Attorney
for Petitioner. [37]

(Duly Verified.)

[Endorsed]: U. S. B. T. A. Filed Jul. 24, 1942. [38]

[Title of Board and Cause.]

NOTICE OF FILING PETITION
FOR REVIEW

To the Chief Counsel of the Bureau of Internal
Revenue, Washington, D. C.

Please Take Notice that the petitioner, on the
..... day of July, 1942, filed with the Clerk
of the United States Board of Tax Appeals, at
Washington, D. C., its Petition for Review by the
United States Circuit Court of Appeals for the
Ninth Circuit, of the decision of the Board hereto-
fore rendered in the above entitled cause.

A copy of the Petition for Review and the As-
signments of Error, as filed, is hereto attached and
served upon you.

Dated at Los Angeles, California, this 20th day
of July, 1942.

HARRY GRAHAM BALTER,
639 South Spring Street, Los
Angeles, California, Coun-
sel for Petitioner.

[Endorsed]: U.S.B.T.A. Filed Jul. 24, 1942. [39]

[Title of Board and Cause.]

SUBSTITUTION OF COUNSEL

Petitioner hereby substitutes and appoints Harry Graham Balter, as counsel of record herein for petitioner, in the place and stead of the former counsel of record herein.

Dated this 11th day of July, 1942.

[Seal]

SAN FERNANDO MISSION

LAND COMPANY,

By W. H. INGOLD,

President, Petitioner.

The undersigned, the present counsel of record for petitioner, do hereby consent to the foregoing substitution.

Dated this 11th day of July, 1942.

GEORGE R. OLINCY,

ERNEST A. TOLIN.

I hereby accept the foregoing substitution.

Dated this 11th day of July, 1942.

HARRY GRAHAM BALTER.

[Endorsed]: U.S.B.T.A. Filed Jul. 24, 1942. [40]

United States Circuit Court of Appeals
for the Ninth Circuit

No.

SAN FERNANDO MISSION LAND COMPANY,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STATEMENT OF EVIDENCE

Following is a Statement of Evidence submitted to the Board of Tax Appeals in the above mentioned case, so far as is necessary to the assignment of errors as filed, reduced to narrative form:

Be It Remembered that the above mentioned cause came on regularly for trial before the Honorable John M. Sternhagen, a member of the United States Board of Tax Appeals, at Los Angeles, California, on February 6th, 1942. George R. Olincy, Esq. and Ernest A. Tolin, Esq., appeared for the taxpayer, and Samuel Taylor, Esq., Special Attorney, and J. P. Wenchel, Chief Counsel of the Bureau of Internal Revenue, appeared on behalf of the Commissioner of Internal Revenue, Respondent.

PETITIONER'S CASE

Mr. Olincy proceeded to make a statement of the [41] case on behalf of the petitioner, in substance as follows:

The year involved in this matter is the calendar year 1938. The taxes in controversy are excess profits taxes in the amount of \$8,035.64, all of which is in controversy, and income taxes in the amount of \$4,508.56, of which all but \$275.56 is in controversy.

There are three issues involved in this case. The first issue is whether or not petitioner is liable for excess profits taxes for the calendar year 1938. A decision of this issue rests upon a determination of whether the petitioner was carrying on or doing business at any time during the period from July 1, 1937 to June 30, 1938.

Under the Revenue Act of 1938, if a corporation was not doing business during the year ended June 30, 1938, it was not liable for 1938 Capital Stock Tax, and under the law, if it was not liable for Capital Stock Tax for the year ended June 30, 1938, it would not be liable for excess profits taxes in this particular case for the calendar year 1938.

Petitioner contends that it was not carrying on or doing business at any time between July 1, 1937, and June 30, 1938, and in support of this position it will prove the following:

First, that petitioner was organized in December, 1904, for the purpose, as stated in the Articles of Incorporation, of buying and selling land and water and subdividing land for sale. The organizers of the petitioner were men [42] of importance who had many outside interests and who, as far as this petitioner was concerned, were simply passive in-

vestors. Among the incorporators were Henry E. Huntington, E. H. Harriman, General Harrison Gray Otis of the Los Angeles Times, J. F. Sartori of the Security Bank of Los Angeles, and the other men in the corporation were men well known in this community. The management and control of the company from its inception until 1925 was in the hands of Mr. L. C. Brand, the founder of the Title Guarantee & Trust Company of Los Angeles. He passed away in 1925.

The petitioner was organized to acquire some 16,000 acres of land in San Fernando Valley some fifteen miles from the center of Los Angeles. By 1921 it had sold approximately 13,000 of the 16,000 acres, had distributed some 3,000 acres to its stockholders and had remaining less than 200 acres of land.

In 1919, a committee was appointed by the Board of Directors to inquire into a plan of distribution of the remaining assets of the company. In 1921 the corporation formally reduced its stated capital from \$1,000,000.00 to \$100,000.00. The petitioner was a very successful firm.

I might state in drawing the picture of the company's activities, that from 1925 to June 30, 1937, the beginning date in issue here, the corporation was dormant, inactive, and there was no one with enough interest in the company, after the passing of Mr. Brand, to prosecute the few re- [43] maining properties for sale and liquidation of the company. The only reason that the corporation did

not formally dissolve was simply the fact that there was so little property that it would have been impossible to have apportioned it among the stockholders and every effort was made to sell and distribute the property in cash rather than in kind.

We intend to present the transactions therefor from 1931 to June 30, 1937, to show a condition of dormancy and inactivity.

For the period that we are concerned with, the company did nothing that it didn't do in previous years, that is still pursued those purposes.

The second issue is whether or not commissions paid to obtain an oil lease were deductible expenses in the year in which paid. The corporation authorized Robert V. New to negotiate an oil lease. The terms of the oil lease that was executed were that a bonus of \$76,130.00 was paid and that was the only obligation on the part of the lessee to make any payment under the lease. The only other interest would be, of course, royalties if and when oil was produced. The terms of the agreement with Mr. New were that he was to get 50% of all the consideration over \$25.00 an acre. Mr. New received a check for \$33,306.88.

The issue is whether this particular item was a deductible expense. It was based upon the receipt of money, and in order to clearly reflect the income, it is the position of the taxpayer that the sum paid in commissions should be taken as a deduction of the year in which the bonus was received by the company and reported in income.

This was a salesman's commission for the lease, not a lawyer's commission, and we contend that the sum was reasonable in amount and commensurate with the services rendered.

The Commissioner disallowed this item as an expense and held that it had to be capitalized.

The third and last issue is whether attorney fees of \$250.00 incurred in drafting this lease that is referred to, is an ordinary and necessary expense, and the same point and same position of the taxpayer is taken that in order to truly reflect income for the year, that it should be deducted from the sum of money received under the lease.

Mr. Samuel Taylor, on behalf of Respondent, then made a statement of the case as follows:

There are but two issues here. One is a doing business issue. The only thing that I can add is that the corporation filed a Capital Stock Tax return showing no value for its capital stock for the capital stock tax year ending June 30, 1938. That is how the issue arises.

The other issue involves the question of whether certain amounts expended in connection with prior operations should be expenses, as petitioner contends, or should be capitalized, as the Commissioner contends. [45]

The 90-day letter from the Commissioner to the taxpayer, states as follows:

"The deduction of \$33,306.88 as an ordinary and necessary business expense representing the com-

mission paid for the securing of an oil and gas lease, and the deduction of \$250.00 representing the payment of an attorney fee for the drawing of said lease, are held to be capital expenditures returnable through depletion and are not allowable as deductions under the provisions of Section 23 (a) of the 1938 Act."

WALTER R. HILKER

was thereupon called as a witness on behalf of petitioner, and being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ernest A. Tolin:

I am Assistant Secretary and Director of San Fernando Mission Land Company. I keep their books and look after their records. I first became connected with the company in 1925, at which time I took charge of the records and books, etc. I first became Assistant Secretary and Director about 1936. I have had the company's books and records in my custody since October of 1925.

The book you hand me is the first minute book of the San Fernando Mission Land Company. On pages 131 and 132 are recorded the minutes of the meeting of the stockholders held [46] September 14, 1936, and on pages 134 and 135 are recorded the minutes of the meeting of the directors of the com-

(Testimony of Walter R. Hilker.)

pany held immediately after the stockholders meeting on September 14, 1936.

(Copies of the said minutes of the stockholders' meeting and the directors' meeting referred to, were offered and received in evidence, and marked Petitioner's Exhibits No. 1 and No. 2, respectively, and made a part of this record.)

I obtained possession of the minute book at the time I became connected with the company, and I have had this book in my possession ever since and I have kept the minutes in it.

The San Fernando Mission Land Company was incorporated in December, 1904.

The document you show me is a Certificate of the Secretary of State of the State of California, bearing date the 3rd day of December, 1904, appended to a photostatic copy of the Articles of Incorporation of the San Fernando Mission Land Company.

(A photostatic copy of the said Articles of Incorporation of the San Fernando Mission Land Company, was offered and received in evidence, and marked Petitioner's Exhibit No. 3 and made a part of this record.)

The document you show me is a photostatic copy of a Certificate of Diminution of the capital stock of the San Fernando Mission Land Company. [47]

(A photostatic copy of the said Certificate of Diminution was offered and received in evidence and marked Petitioner's Exhibit No. 4 and made a part of this record.)

(Testimony of Walter R. Hilker.)

The document you show me is a typewritten copy certified by me as Assistant Secretary of San Fernando Mission Land Company, being a correct copy of the minutes of the Board of Directors' meeting of the company held on January 18, 1905.

(A certified copy of said minutes was offered and received in evidence and marked Petitioner's Exhibit No. 5 and made a part of this record.)

The document you show me is a certified copy of the minutes of a special meeting of the Board of Directors of the San Fernando Mission Land Company, bearing date of February 2, 1927, and it is a true copy of the minutes as they appear in the minute book.

(A certified copy of said minutes was offered and received in evidence and marked Petitioner's Exhibit No. 6 and made a part of this record, it being understood, however, that the Petitioner would subsequently supply to the Board a copy of the Statement of Assets and Liabilities which appear in the original minutes.)

I have gone through the minute book and the records of the corporation and determined what dividends have been declared by the San Fernando Mission Land Company since the time of its incorporation down to and including the 29th

(Testimony of Walter R. Hilker.)

of [48] January, 1923, and I have prepared a statement of the dates that such dividends were declared and the amount of such dividends so declared.

The document you show me is a true and correct copy of that statement prepared from the minute books.

(A copy of said statement was offered and received in evidence and marked Petitioner's Exhibit No. 7 and made a part of this record.)

No other dividends have been declared by the San Fernando Mission Land Company between the date of the last dividends shown in Exhibit No. 7; that is to say, between January 29, 1923, and June 30, 1938.

The document you show me is a certified and correct copy of the minutes of a special meeting of the Board of Directors of the San Fernando Mission Land Company bearing date of September 25, 1916.

(The said certified copy of said minutes was offered and received in evidence and marked Petitioner's Exhibit No. 8.)

(There was thereupon offered and received in evidence and marked Petitioner's Exhibits No. 9 to No. 23, inclusive, and made a part of the record, certified copies of minutes covering further dividend declarations shown in the dividend sheet marked Exhibit No. 7.)

(Testimony of Walter R. Hilker.)

The document you show me is a true and certified copy of the minutes of a meeting of the Board of Directors [49] of the San Fernando Mission Land Company held on the 10th day of November, 1927.

(The said certified copy of said minutes was offered and received in evidence and marked Petitioner's Exhibit No. 24.)

The document you show me is a true and certified copy of the minutes of the meeting of the Board of Directors of the San Fernando Mission Land Company held on the 16th day of March, 1938.

(The said certified copy of said minutes was offered and received in evidence and marked Petitioner's Exhibit No. 25.)

The document you show me is a true and certified copy of the minutes of the meeting of the Board of Directors of the San Fernando Mission Land Company held August 26, 1938.

(The said certified copy of said minutes was offered and received in evidence and marked Petitioner's Exhibit No. 26.)

The document you show me is a true and certified copy of the minutes of the meeting of the Board of Directors of the San Fernando Mission Land Company held December 8th, 1938.

(The said certified copy of said minutes was offered and received in evidence and marked Petitioner's Exhibit No. 27.) [50]

(Testimony of Walter R. Hilker.)

The document you show me is an oil and gas lease, certified by me as Assistant Secretary of the San Fernando Mission Land Company to be a true and correct copy which I prepared from the original lease.

(The said certified copy of said oil and gas lease bearing date of March 16, 1939, between San Fernando Mission Land Company and A. L. Howell, was offered in evidence and marked Petitioner's Exhibit No. 28.)

The document you show me is a true and certified copy of the original oil and gas lease bearing date of November 25, 1938, between the San Fernando Mission Land Company and the Shell Oil Company.

(The said certified copy of said oil and gas lease was offered and received in evidence and marked Petitioner's Exhibit No. 29.)

The document you show me is a true and certified copy of the original oil and gas lease bearing date of the 26th day of August, 1938, between the San Fernando Mission Land Company and Tidewater Associated Oil Company.

(The said certified copy of said oil and gas lease was offered and received in evidence and marked Petitioner's Exhibit No. 30.)

The document you show me is a true copy made from the original of the records of the corporation, of an instrument which begins "This Indenture

(Testimony of Walter R. Hilker.)

Made this 23rd day of May, 1918, by and between San Fernando Mission Land Company, [51] Grantor, and The Sunshine Company, a light company, Grantee,"

(The said copy of said deed was offered and received in evidence and marked Petitioner's Exhibit No. 31.)

The San Fernando Mission Land Company acquired approximately 16,000 acres at or about the time of its incorporation, or shortly thereafter, for the purpose of resale or subdivision. In general their property was located in the northwest part of the City of Los Angeles about 15 miles from the center of town. By "the City of Los Angeles", I refer to the corporate limits of the city. The land was not actually located in any thickly inhabited part of the city. The corporation was active in the development of this land from about 1905 to 1919. Originally there were 10 stockholders, among whom were E. H. Harriman, H. E. Huntington, Harrison Gray Otis, M. H. Sherman, and several others whom I don't recall. These men were not at all active in the affairs of the corporation during the fiscal year which ended June 30, 1938. At that time several of them still had stock but none of them had any interest in the affairs of the corporation, nor were they active in the corporation. In 1923, when the last of these dividends were paid that are shown on the statement of dividends, the company had about 200 acres

(Testimony of Walter R. Hilker.)

scattered in several places. Nothing definite was done looking toward the sale of that land between 1919 down [52] to the beginning of the fiscal year that ended on June 30, 1938. By that I mean people in the Valley around the packing house, etc., knew the property was for sale and would have been sold if a purchaser could have been found for it.

The corporation kept a cash receipt and disbursement record during the time that I was in its employ and I made the entries in those records. The company also had a general journal in which I made entries. The company also had a general ledger in which I made entries. Besides the cash receipts and disbursement records, the general journal, the general ledger and the corporation minute book, there was also kept during my employ with the corporation a stock journal and a stock ledger.

(Photostatic copies of the said books and records for the calendar years 1931 to 1938, inclusive, cash receipts and disbursements, general journal, general ledger and check disbursements, were offered and received in evidence and marked Petitioner's Exhibits Nos. 32 to 35, inclusive, and made a part of this record.)

The document you show me is a statement showing the financial condition of the corporation as of December 31, 1930, which was prepared from the financial records of the corporation.

(Testimony of Walter R. Hilker.)

(The said balance sheet was offered and received in evidence and marked Petitioner's Exhibit No. 36, and made a part of this record.)

[53]

The document you show me is a statement showing the financial condition of the corporation as of June 30, 1937.

(The said balance sheet was offered and received in evidence and marked Petitioner's Exhibit No. 37, and made a part of this record.)

Referring to Exhibit No. 36, there is an item of cash in bank \$917.45; that was all the cash the corporation had on hand at that time. The Exhibit also contains a reference under the title "Land" to an orange grove which is priced on this Exhibit at \$52,500.00. I have seen this orange grove and I have been upon it, and I have seen other orange groves. Other corporations with which I am connected operate orange groves. This particular orange grove referred to is located at the end of Laurel Canyon Boulevard partly in the City of Los Angeles and partly in the City of San Fernando. When I say it is in the City of Los Angeles I mean that it is merely within the corporate limits of the city. It is in the general vicinity of an area that is rather sparsely populated and devoted principally to other agricultural or untilled lands. The grove contains approximately 35 to 40 acres. As of December 31, 1930, the

(Testimony of Walter R. Hilker.)

grove was not in very good shape. It was run down, had some scale and wasn't in very good shape at all. The oranges which were planted there were navels. This is not in a good navel district. Valencias and some lemons are produced in that area. The grove was not being operated profitably during [54] the year 1931. There were impediments to the proper tilling and care of the grove. When the grove was planted, they put an overhead sprinkling system in, and gradually as the rains would wash the soil from the top, these pipes would sometimes come out on top of the ground and you couldn't get a plow or tractor in there to cultivate the land properly. There was considerable Johnson grass in there. Johnson grass is a weed that is very hard to eradicate and very detrimental to groves. It has been our experience that you have to kill it. It won't die of itself; it spreads, rather. During the time beginning the first of 1931 down to the 30th of June, 1937, the corporation has received some returns from crops of this grove. This grove is a part of the original 16,000 acres of land of the corporation. It wasn't sold with the other land that had been sold down to 1919 because it was just the tail-end piece of the whole property. Nobody bought it. It was for sale during that period. As to why the corporation continued to maintain the grove, I can only speak from the time I was there, 1925. It was a grove that was taken over with the other assets of the corporation

(Testimony of Walter R. Hilker.)

at that time, and we just didn't know what else to do with it. We spent a minimum of money on it to keep it up until we could sell the property. It was for sale during all of that time. We did not pay taxes on that grove during the period commencing the 1st of January, 1931, and ending July 1, 1937, because we didn't have the funds to [55] pay them with. During that time the grove was gradually deteriorating. We didn't have the funds with which to keep it up and nobody took an interest in the grove. I was the only one that looked after it. As far as the financial part of it was concerned, I didn't have the funds to keep it up with. As to the pests and the Johnson grass, the scale and those things, the condition of the grove got considerably worse. The item which appears upon this statement as of December 31, 1930, as Parcel No. 2, unplatted hill land, was a parcel of about 138 acres. That was the tail-end of the property owned by the corporation. It had never been platted into city lots or anything. It is just an unplatted tract of land. I have seen it many times. There are no improvements on it; there is no water available to it and no utilities available and no streets. It is remote from any of the established residential sections. I would say that that particular piece of land is about 18 or 20 miles from the center of Los Angeles. This property was a part of the original 16,000 acres of the corporation. It wasn't sold because they never found a buyer for it. Parcel No. 3 which appears upon this statement, is

(Testimony of Walter R. Hilker.)

a parcel of land containing approximately 1.7828 acres. As near as I could figure out, most of that property surrounding it had been sold by metes and bounds, and this was a little parcel, less than 2 acres, left between these various other sales.

(A Statement of assets and liabilities, was at this time offered [56] and received in evidence, was made a part of Petitioner's Exhibit No. 6, and made a part of this record, pursuant to understanding as reflected on page 8 herein.)

Referring to Exhibit No. 36, which was the Statement of Assets, Liabilities and Capital of the San Fernando Mission Land Company as of December 31, 1930, there appears upon that statement this item, "Prepaid Expense: Deposit on Compensation Insurance Policy". This item reflects the deposit made on an insurance policy covering the orange grove labor; that is, a compensation insurance policy. There also appears under the item "Liabilities", Accounts Payable, \$2,607.00. This was an item due the Angeles Mesa Land Company for fertilizer, tractor hire, horse hire and things like that, respecting the care of the orange grove entirely. There is also an item of \$2,000.00 due to Angeles Mesa Land Company for money borrowed. I don't recall the circumstance of that transaction. It was just a loan made to the San Fernando Mission Land Company by the Angeles Mesa Land Company.

Referring to Exhibit No. 37, which is a Statement of Assets, Liabilities and Capital for the San Fer-

(Testimony of Walter R. Hilker.)

nando Mission Land Company as of July 1, 1937, and referring to the first item appearing thereon, which is Cash in Bank, \$479.65, and the second item, which is Orange and Lemon Grove. This is the same property that appears as the Orange Grove under Land Parcel No. 1 on Exhibit No. 36. The condition of this [57] property on July 1, 1937, as compared to its condition on December 31, 1930, was that it was in much worse shape. As a matter of fact, we had received notices from the Horticultural Department, State of California, that either the grove must be thoroughly fumigated and taken care of or some other disposition made of the grove. It was badly infested with scale, and Johnson grass throughout, and was in very bad condition.

Parcel No. 2, under the item Land on Exhibit No. 37, is the same property that is described as Unplotted Hill Lands in Exhibit No. 36. There was no change whatever in the condition of this property on July 1, 1937, as compared with its condition on December 31, 1930. No improvements had been made or anything done. It was just the same property. I do not recall of any sale.

Referring to Exhibit No. 37 and the item Mineral Interests in Land, "Deed Reservations of Mineral and Other Rights in Lands now Legally Described as: Lots 3 to 14, inc., etc." \$1.00. That was a reservation for oil and mineral rights on some 3,000 acres of land in the San Fernando Valley. The 3,000 acres were part of the original 16,000 acres that the cor-

(Testimony of Walter R. Hilker.)

poration had purchased shortly after it was incorporated. This item does not appear on Exhibit No. 36. The entry was made—I think it was in 1936—by just placing the nominal value of a dollar on the whole thing. I don't know why they didn't carry it prior to that time; [58] but it is the same reservation that the corporation owned in 1930.

Referring to Exhibit No. 37, under Liabilities, the item "Accrued City and County Property Taxes, Orange and Lemon Grove, years 1931 to 1936, \$4,642.09". None of these taxes were paid. Nor were any taxes paid which appear under Taxes, Unplotted Hill Lands, years 1931 to 1936, \$2,807.60. These tax items refer respectively to the same orange grove about which I have previously testified, and to the same unplotted hill lands about which I have previously testified.

Referring to the item Accounts Payable, Angeles Mesa Land Company, \$282.79. That represents miscellaneous items advanced by the Angeles Mesa Land Company in payment of labor on the orange grove, and possibly water. It was a series of small transactions.

Referring to the item Hazeltine Packing Company, \$297.47, as an account payable. That represents advances made by the packing house for hardware and miscellaneous small items used on the orange grove entirely.

Referring to Exhibit No. 36 which shows capital stock issued and outstanding as \$100,000.00. This

(Testimony of Walter R. Hilker.)

was the correct outstanding stock as of December 31, 1930, and the same item of \$100,000.00 capital stock outstanding which appears on Exhibit No. 37 as of July 1, 1937. That is the correct capitalization as of that time.

The deficit appearing on the statement, Exhibit No. [59] 36, in the sum of \$37,339.55, was the total deficit as of December 31, 1930, and the deficit as of July 1, 1937, shown as \$41,437.95, is the correct deficit, and indicates that there was a greater deficit in 1937 than in 1930.

I have prepared from the books and records of the company a comparative statement of income and expenses from January 1, 1931, to June 30, 1937. All income and expenses of the corporation during that interval as they appear upon the books, are reflected on that statement which I prepared, and all of the income and expenses of the corporation were duly entered upon the books from which I made that statement. The document which you show me is this statement which I prepared.

(The said Statement was offered and received in evidence, and marked Petitioner's Exhibit No. 38, and made a part of this record.)

Referring to this Exhibit, there appears under Income, the item Proceeds from Sale of Oranges and Lemons, the total for this six and one-half year period being \$6,833.15. That item represents the net proceeds of the sale of oranges and lemons from

(Testimony of Walter R. Hilker.)

that grove. And there appears under Income, \$1,470.50 for the sale of property for that six and one-half year period. This refers to the sale of a small triangular piece about which I testified on Friday. There were approximately 2 acres. That appears on the balance sheet of December 31, 1930, as of no value. I think this is parcel No. [60] 3 in Exhibit No. 36. That was the net amount received from the sale of that property after the title charges and commission had been taken out. This was the only piece of that property which was sold during that time. It was sold to a lady in San Fernando by the name of Wilkinson.

Referring next to an item under Income, Sale of Oil Reservations, \$3,750.00. That was the amount received from the surface owner of a parcel of about 233 acres, which is part of the land on which the oil reservations had been made. The sale was made in 1936. This land was part of the original holding of 16,000 acres, and at the time the property was sold, the oil rights had been reserved. In 1936 we conveyed the mineral rights to the owner of the fee. This was the only sale of oil reservations that occurred during this six and one-half year period. It was sold to the Tidewater Associated Oil Company.

Referring to the next item under Income which appears as Release—Oil Lease, \$10.00, in 1936. That was an amount received from the Shell Oil Company for a quitclaim deed executed by them after

(Testimony of Walter R. Hilker.)

they had abandoned a certain well that they were drilling on part of this property.

There appears also the item Rent-Pasture, \$75.00, under 1935. That is an amount we received from a party in San Fernando for pasturing horses and cattle on the so-called hill lands. Up to that time that was the only income we had had from the hill lands. [61]

The real estate taxes which appear under Expenses as \$5,127.34, were not paid.

The item which appears as of June 30, 1937, \$3,140.15, as real estate taxes, were not paid.

Referring to an item of \$1,800.00, administration expense, that appears as of the closing date of June 30, 1937. This was a charge made by the Angeles Mesa Land Company for the administration of the affairs of the San Fernando Mission Land Company for the year 1936. This does not include any charge for the other years, that is, from 1931 on.

Services were rendered by the Angeles Mesa Land Company to the corporation in the administration of its affairs during those earlier years, but no charge was made for that. Generally, this service consisted of rental of the office, use of telephones, the overseeing of the care of the orange grove and the use of its tractor. They put much fertilizer on the grove for which they never received reimbursement. And there were various other items. I never received any compensation from the San Fernando Mission Land Company. I was an employee of the

(Testimony of Walter R. Hilker.)

Angeles Mesa Land Company during that period. I took care of the San Fernando Mission Land Company's affairs insofar as I had anything to do with them on the time of the Angeles Mesa Land Company. That is reflected in the \$1,800.00 administration expense item.

There also appears an item, Interest Paid, \$1,062.67. These are the amounts paid by the San Fernando Mission Land [62] Company to the Angeles Mesa Land Company for actual loans made by the Angeles Mesa Land Company to the San Fernando Mission Land Company.

The item, Franchise Tax, \$212.08, is the total paid to the State of California for the franchise tax for the particular years, that is, in each one of these years, from 1931 to and including 1937, we paid \$212.08, which is the minimum tax for all, except the year 1937.

The Angeles Mesa Land Company was a ten percent stockholder in the San Fernando Mission Land Company. It made loans from time to time to the San Fernando Mission Land Company. Mostly these loans went into the expenses of the care of the orange grove. The San Fernando Mission Land Company was not able to operate during this period from 1931 to June 1937, upon its own funds. During the years 1931 to June 30 of 1937, the affairs of the San Fernando Mission Land Company were managed by Mr. W. P. Jeffries, who was president and manager of the company from December 1 of 1931

(Testimony of Walter R. Hilker.)

until he passed away in June of 1935. Then Mr. R. F. Ingold was elected president in 1936, after which time he has been the president-manager of it. Mr. Jeffries became president in October of 1925, as I recall it. He continued to be president until his death which was on June 12, 1935. I was in personal contact with Mr. Jeffries during all that time. His office and my office were in the same suite. I took directions from Mr. Jeffries as to the things I did [63] concerning the San Fernando Mission Land Company, and the same has been true as to Mr. Ingold during the time that he has been president. There were no meetings of shareholders that were held, or minutes of directors that are not shown on these minute books that have been brought into court here.

Referring to the minute book in question, the date of the last meeting of directors of the corporation prior to the year 1936, was held on February 2, 1927. The last meeting of shareholders prior to the year 1936, was held on May 28, 1918. After that meeting of February 2, 1927, the directors next held a meeting on September 14, 1936. There were no meetings of any executive committee of the directors in that interval between the 2nd of February, 1927, and the time in 1936 when the board proper next met. After their meeting in 1918, the shareholders next met on September 14, 1936. There were no activities at all between the stockholders of the corporation and the corporation during that inter-

(Testimony of Walter R. Hilker.)

val, that is to say, the interval between the holding of the meeting of the directors in 1927 and the time at which a meeting was held in 1936. There was very little interest shown by any of the stockholders in the affairs of the corporation between those dates. However, several of them did write in for information which was answered by correspondence. I took care of the correspondence between stockholders, or those writing on their behalf, and the corporation, during that time. [64]

The letter which you show me, upon the letter-head of the Security-First National Bank of Los Angeles, addressed to W. R. Hilker, San Fernando Mission Land Company, is one which I as an employee of the San Fernando Mission Land Company received from the Security-First National Bank, and the carbon copy of a letter to that bank bearing date of March 16, 1933, is the carbon copy of the letter which I dictated as an answer to the letter from the Security-First National Bank.

(The said letter was offered and received in evidence, marked Petitioner's Exhibit No. 39, and made a part of this record.)

The letter which you show me, upon the letter-head of the Security-First National Bank of Los Angeles, bearing date of February 9, 1934, addressed to the San Fernando Mission Land Company, is one which I as an employee of the San Fernando Mission Land Company received from the Security-

(Testimony of Walter R. Hilker.)

First National Bank, and the carbon copy of a letter to that bank bearing date of February 16, 1934, which is the carbon copy of the letter which I dictated in answer to the letter from the Security-First National Bank, and mailed.

(The said letter was offered and received in evidence, marked Petitioner's Exhibit No. 40, and made a part of this record.)

(A series of similar letters, one or two in each year, and two in the particular year in question, were then offered and received in evidence and marked Petitioner's Ex- [65] hibits Nos. 41 to 46, inclusive, and made a part of this record.)

The document you show me is a Report on General Corporate Franchises for the year 1926, of the San Fernando Mission Land Company, which I made out in my own handwriting. It is a true copy of the original report that was filed with the State of California.

(The said report was offered and received in evidence, marked Petitioner's Exhibit No. 47, and made a part of this record.)

The document you show me is a Report on General Corporate Franchises, State of California, for the year 1927, the handwritten portions of this Report having been made out by me. It is a true copy of the original filed with the State of California.

(Testimony of Walter R. Hilker.)

(The said report was offered and received in evidence, marked Petitioner's Exhibit No. 48, and made a part of this record.)

The document you show me is a Report on General Corporate Franchises for the year 1928, which is a typewritten copy with the exception of the signatures. I prepared this report. It is a true copy of the original on file with the State of California, and I identify the signature of Mr. Jeffries as his signature.

(The said Report was offered and received in evidence, marked Petitioner's Exhibit No. 49, and made a part of this record.) [66]

The document which you show me is a statement which I prepared of Income and Expenses of the San Fernando Mission Land Company for the period of July 1, 1937, to June 30, 1938. I prepared this statement from the financial records and other records of the corporation. It reflects all of the transactions of the corporation for the period that is stated thereon.

(The said Statement was offered and received in evidence, marked Petitioner's Exhibit No. 50, and made a part of this record.)

Referring to Exhibit No. 50, being the Statement of Income and Expenses for the year of July 1, 1937, to June 30, 1938, of the San Fernando Mission Land Company, in which there appears several

(Testimony of Walter R. Hilker.)

items under income, and more particularly, to the first item, which is Proceeds from Sale of Oranges and Lemons—Final Returns, \$51.87. This represents the final payment received from the packing house from the sale of the citrus fruit taken from the land of the San Fernando Mission Land Company. By "Final Returns", I meant for the whole course of the operation of the grove.

The next items which appear under the heading Refunds—the first one being Fruit Growers Supply Company, year 1930-'31—Final \$18.48. That item represents a refund of a deduction made by the packing house from the sales of fruit for the year 1930-'31. It is a refund of a revolving fund, you might call it. That was the last refund [67] that was received from the Fruit Growers Supply Company. It was the last transaction of that kind that the San Fernando Mission Land Company had.

There appears next under Refunds—Railroad Claims—Final, \$20.53. That is an item appearing on the statement made by the packing house to the San Fernando Mission Land Company and it represents paid claims from the railroad company for fruit spoilage in transit and so forth. That was the last payment of that kind the corporation ever received.

The next item which appears is Profit on Sale of Part of Lot 1, Tract 3660—4.75 Acres, Sales Price \$2,365.00; cost of land, \$475.00. Net, \$1,890.00.

(Testimony of Walter R. Hilker.)

That was a sale of a parcel of about a little less than five acres of land to a party by the name of Marshall, and was cut out of Lot 1, of Tract 3660. The sales price was \$2,365.00, and the cost of the land was \$475.00, making a gross profit there of \$1,890.00. The expenses appear later on in the statement. This was part of the land that was originally acquired by the corporation as being part of the 16,000 acres that I have previously testified about. It was a part of the so-called hill lands there. Up to this time this parcel was the only part of that hill land that had been sold.

The next item is Proceeds from Sale of Oil Reservations to Surface Owner—John O'Melveny, \$1,180.00. That is an amount we received for the release of approximately 11 acres of land surrounding the home of John O'Melveny, and [68] his part of the land under which we held the oil reservations appearing on the balance sheet there at the price of one dollar. That was part of the land that was represented in the original 16,000 acres. This oil reservation was released to Mr. O'Melveny during the period shown on this statement.

The next item is Rental of Pasture—Hill Lands, \$50.00. That is an item we received for the rental of the hill lands for pasturing purposes.

The last item under Income is Received from Agricultural Conservation Program, \$59.78. That

(Testimony of Walter R. Hilker.)

represents an amount received from the Government covering the non-planting of the orange grove.

This gives us a total of \$3,270.66 as income for the period commencing July 1, 1937, and ending June 30, 1938. That is a true statement of all of the income of the San Fernando Mission Land Company from all sources during that year.

The statement then shows Expenses — Orange Grove Expenses, and under Orange Grove Expenses, Real Estate Taxes, \$904.60; but these taxes were not paid. These taxes were charged to the same orange grove which is in this case and about which I previously testified.

The next item of Labor, \$420.00, represents an expenditure from time to time by the San Fernando Mission Land Company for labor in the absolute necessary care of the [69] grove. By "absolute necessary care of the grove", I mean that it was a minimum care that we could possibly give it and still retain it as a grove. Sometimes one man was employed during the week, and sometimes we had two men on it. This includes labor for any necessary purposes.

The item of \$194.95 for water, was payment of water received from the city of Los Angeles and was entirely used on the orange grove.

The item of Team and Tractor Hire, \$42.75, refers to an expenditure for trying to cultivate in between the trees.

(Testimony of Walter R. Hilker.)

The Miscellaneous item of \$3.04, refers to the orange grove expenses. That was on the packing house statement. I don't recall what that was.

The next item, Real Estate Taxes—Hill Land, \$745.11, refers to the unplotted hill lands that I previously testified concerning. Subsequently that entire item was paid. I don't know whether it was paid at this period or not. A part of it was paid at the time we made a sale of the land to Marshall.

The item, Cost of Pulling out Citrus Trees—Grove Abandoned, \$456.75, is explained as follows: It had been apparent for some time past that the grove was not self-sustaining, would never be able to take care of itself, and it was finally determined that we would pull out all of the trees. And this amount represents the actual price that we [70] paid out for the pulling of those trees. Mr. Ingold and I discussed this thing many times. We just didn't know what the dickens to do with that grove, whether to try to continue on with it or just abandon it and forget it. So during this period a number of things happened that forced Mr. Ingold and myself to pull out the trees. As I have testified before, the pests, the scale, was very bad on the grove. The Johnson grass was very bad. There had been a frost that year and it damaged much of the fruit. Another thing was that the pipelines were coming through to the surface and it was absolutely impossible to get in there with a plow or tractor or anything without cutting those pipes. And the

(Testimony of Walter R. Hilker.)

grove being in such a deplorable condition and no returns from it, we just determined to pull out all of the trees. We had notices from the Horticultural Department of the County of Los Angeles that it must be fumigated on account of the pest infestation of scale. In my opinion it was not saleable as an orange grove at that time. The trees were removed in December of 1937 and February or May of 1938. We have never paid the taxes on the grove between the year 1930 and June 30, 1938. The grove was sold to the State for delinquent taxes. We didn't do anything toward redeeming it during the fiscal year from June-July, 1937, to June 30, 1938.

The item of General Expense, \$79.14, which appears on this statement is composed of—\$75.00 which was paid [71] to survey or plot the land sold to Marshall, and \$4.14 which was paid for making some blue prints of that survey.

The item of Franchise Tax, \$25.00, is the amount paid to the State of California for the Franchise Tax for that year. That was the minimum franchise tax necessary in order to maintain the corporate status of the corporation.

The item of Capital Stock Tax, \$1.00, was a tax paid to the Government on the valuation fixed by the San Fernando Mission Land Company for that year, that is, for the year 1937.

The next item of Title Charges on Sale of Property, \$25.00, refers to the costs of the policy of

(Testimony of Walter R. Hilker.)

title insurance on the sale of the property to Marshall.

There were no other or additional items of income or expenses that the San Fernando Mission Land Company had in fact during the year from July 1, 1937, to June 30, 1938.

During the same period, from July 1, 1937, to June 30, 1938, we made a loan of \$1,500.00 to the Angeles Mesa Land Company. We did not charge any interest on the loan. We did not take a note, it was just an open account. This loan is reflected by the books which have been introduced in evidence. It was made to the same Angeles Mesa Land Company which is a stockholder of this corporation.

There was a payment of \$639.73 for delinquent taxes during that year. This payment of taxes was on Lot 1 of Tract 3660, part of which was sold to Marshall. The reason [72] we paid these delinquent taxes when we were not paying other tax delinquencies was that we found it necessary to pay these taxes in order to clear the title on the property that we agreed to sell to Marshall. We had to pay the taxes on the whole lot, although we were selling only a portion of the lot.

I think we paid a corporation income tax during that year on the income for the preceding year in the amount of \$188.65, and during that year there was some money paid to Hazeltine and Angeles Mesa Land Company in payment in full of the

(Testimony of Walter R. Hilker.)

account to that date—\$282.79 was paid to Angeles Mesa Land Company, and \$297.47 to Hazeltine Packing Company (referring to Exhibit No. 37). These monies were paid to reimburse these various companies for expenditures they made for the San Fernando Mission Land Company. These items do not appear as expenses on the statement, which is Exhibit No. 50, because they represent amounts due as of the beginning of the period covered by that statement, and the loan of \$1,500.00 doesn't appear on the statement, which is Exhibit No. 50.

I don't recall the circumstances of that loan of \$1,500.00 to Angeles Mesa Land Company. It was purely an accommodation loan, made for the accommodation of Angeles Mesa Land Company.

I have prepared a statement of assets, liabilities and capital of San Fernando Mission Land Company as of [73] June 30, 1938, and the document which you show me is that statement. I prepared it from the books of the corporation.

(The said Statement was offered and received in evidence and marked Petitioner's Exhibit No. 51, and made a part of this record.)

The item which appears on this statement, Amount Receivable (from Angeles Mesa Land Company, a stockholder)—no interest, \$1,500.00, is the same transaction about which I have just tes-

(Testimony of Walter R. Hilker.)

tified, that is, the accommodation loan to that stockholder.

The item, Land—Orange and Lemon Grove, \$52,500.00, under Assets, refers to the same orange and lemon grove about which I have testified. It is the same property although the trees had been removed during the year.

The item, Unplotted Hill Lands, \$13,325.00, is the same land that is described on the other statements of assets, liabilities and capital that have been introduced here as Exhibits Nos. 36 and 37, I think, except that the property sold to Marshall is eliminated. The difference in the value represents the deduction that is made for the land that was sold to Marshall. And the item, Mineral Interests in Land at one dollar, is the same that appears on Exhibit No. 37, the statement as of July 1, 1937, the beginning of that year.

At the end of the fiscal year ending June 30, 1938, we still owed the taxes which appear under Liabilities, [74] the Accrued City and County Taxes, Orange and Lemon Grove, \$5,546.69; and on June 30, 1938, we still owed the taxes which appear under Liabilities, the Accrued City and County Taxes for Unplotted Hill Lands, years 1931 to 1937, \$2,855.42.

The corporation did not at any time since I have been connected with it carry on the business for which it was incorporated. It did not acquire any

(Testimony of Walter R. Hilker.)

new property at any time since I have been connected with it.

I have been a director of the corporation since September of 1936. I first entered its employ in October, 1925.

The assets were not distributed and the corporation liquidated prior to the close of the fiscal year ending on June 30, 1938, because it wasn't feasible to split up the land and distribute it to the stockholders. Neither was it possible under conditions that we had to sell the property. We couldn't sell the property and distribute the cash. The property was for sale during all of that time. Conditions were much different than the circumstances of the problems involved in a land dividend than the time the corporation paid out a million dollars many years ago. It is my opinion that it would not have been feasible to have distributed the land among the shareholders, that is, the unplotted hill land and the orange grove land. [75]

Cross Examination

By Mr. Taylor:

The San Fernando Mission Land Company is still in existence. It has never been dissolved.

Petitioner's Exhibit No. 14 which you show me, is a copy of the minutes of a meeting of the Board of Directors of the San Fernando Mission Land Company held on April 17th, 1919, and the particular portion of the minutes that you call my atten-

(Testimony of Walter R. Hilker.)

tion to refers to a resolution which was moved and seconded, that certain properties be sold, "being about 800 acres, and that all oil, gas and mineral rights be reserved by this company and sold subject to these rights."

I wouldn't go so far as to say that as far back as 1919 the San Fernando Mission Land Company was aware that there might be oil under its properties and that it had valuable oil rights. They reserved the oil rights. Whether they thought it was valuable or not, I don't know. The San Fernando Mission Land Company began reserving the oil rights as far back as 1919. They did not follow that as a continuous policy from then on. In the sale to Marshall there were no oil rights reserved in that.

I have examined Petitioner's Exhibit No. 6, which are the minutes of the meeting of the Board of Directors of the San Fernando Mission Land Company held on February 2, 1927, and more particularly, the part beginning "Mr. Jeffries reported". These minutes indicate that the company decided [76] not to grant any more releases for oil rights at that time.

As of the calendar year 1938 and prior thereto, the company had reserved oil rights to some 3,000 acres of land.

I do not know why in these minutes of 1927 the company decided not to release any more oil rights.

(Testimony of Walter R. Hilker.)

Throughout the period from July 1st, 1937, to June 30, 1938, and prior thereto, the company had oil rights to some 3,000 acres of land, and except as it released some of its oil rights, as for example, the sale to the Associated Oil Company which took some 230 acres out of that, it was true that as of June 30, 1938, the company kept the oil rights as to the remainder of the 3,000 acres of land, and it has continued to have oil rights to several thousand acres of land.

Referring to Petitioner's Exhibit No. 24 in evidence, which are the minutes of the meeting of the Board of Directors held on November 10, 1937, at that meeting a lease of certain oil rights was authorized by the Board of Directors. The lease was executed but nothing was ever done under the terms of the lease.

Referring to Petitioner's Exhibit 25, which are the minutes of the meeting of the Board of Directors held on March 16, 1938. At that time a lease was presented to the directors for their approval and authority to execute it covering all the oil rights in the property of the San Fernando Mission Land Company known as the Sunshine Ranch. [77] That lease was actually executed.

(At this time the Capital Stock Tax Return of the San Fernando Mission Land Company, for the year ending June 30, 1938, was offered and received in evidence and marked Respond-

(Testimony of Walter R. Hilker.)

ent's Exhibit A, and made a part of this record.)

(At this time the Income Tax Return of the San Fernando Mission Land Company for the calendar year 1938, was offered and received in evidence as Respondent's Exhibit B, and made a part of this record.)

(At this time the Income Tax Return of the San Fernando Mission Land Company for the calendar year 1939, was offered and received in evidence as Respondent's Exhibit C, and made a part of this record.)

(At this time the Capital Stock Tax Return of the San Fernando Mission Land Company for the year ending June 30, 1939, was offered and received in evidence and marked Respondent's Exhibit D, and made a part of this record.)

(At this time the Income Tax Return of the San Fernando Mission Land Company for the calendar year 1940, was offered and received in evidence and marked Respondent's Exhibit E, and made a part of this record.)

(To the receiving in evidence of Respondent's Exhibits B, C, D, & E, hereinabove referred to, Petitioner interposed objections on the ground of the irrelevancy and immateriality of each of these exhibits on the ground that they were for years subsequent to the year 1938. In each case the objection was overruled and the exhibit received.) [78]

(Testimony of Walter R. Hilker.)

Referring to Respondent's Exhibit B, on line 13 of said exhibit, it states Other Income, \$97,464.81. The corporation received that amount during the calendar year 1938. It received this money for the execution of two oil leases.

Referring to Respondent's Exhibit C, line 9, of page 1 of that exhibit, under the heading Gross Income, it states Rents, \$10,864.07. The corporation received that money in payment of deferred drilling under these leases.

Referring to the Corporation Income Tax Return for the calendar year 1940, Respondent's Exhibit E, under the heading Gross Income, on page 1, line 9, after the word Rent, there is given the sum of \$21,376.51. The corporation received that money from the two oil companies for deferred drilling. This was all upon the same properties in 1939 and 1940 which the corporation had owned in prior years, so that in 1939 and 1940 there was no acquisition, no new acquisitions which were the subject of leases.

That income was received from some of the oil rights reserved under the 3,000 acres to which I have referred, and which the minutes indicate the company decided as far back as 1919 to reserve the oil rights pertaining to those 3,000 acres.

(At this time there was offered and received in evidence and marked Respondent's Exhibit E-1 and made a part of this record, the Capital Stock Tax Return of the San Fernando Mission

(Testimony of Walter R. Hilker.)

Land Company for the year ending June 30, 1935.) [79]

(There was offered and received in evidence and marked Respondent's Exhibit F and made a part of this record, the Capital Stock Tax Return of the San Fernando Mission Land Company for the year ending June 30, 1934.)

(There was offered and received in evidence and marked Respondent's Exhibit G and made a part of this record, over the objection of Petitioner that the same was "irrelevant and immaterial", which objection was overruled, the Capital Stock Tax Return of the San Fernando Mission Land Company for the year ending June 30, 1940.)

(There was offered and received in evidence and marked Respondent's Exhibit H and made a part of this record, a certified and correct copy of the minutes of a meeting of the Board of Directors of the San Fernando Mission Land Company held on August 14, 1925.)

(There was offered and received in evidence minutes of meetings of the Board of Directors of the San Fernando Mission Land Company held on October 2, 1939, December 27, 1939, June 7, 1940, October 21, 1940 and December 17, 1940, with the right to substitute certified copies of these minutes, marked Respondent's

(Testimony of Walter R. Hilker.)

Exhibits I, J, K, L and M, respectively, and made a part of this record.)

Referring to the minutes of the Board of Directors of the San Fernando Mission Land Company, held on June 7th, 1940 (Respondent's Exhibit K), it is correct that the directors declared a dividend of \$10.00 per share to the stockholders. This dividend was actually paid in 1940 from [80] the rentals received for delayed drilling; in other words, from its reservation of oil rights.

Referring to the corporation's 1938 income tax return. Under deductions on page 1 there is a deduction of \$5,000.00 as compensation of officers. This money was paid to the president, Mr. Ingold. That was in payment of all services from the time he became president of the company in September of 1936 to the end of 1938. He had spent considerable time and effort in negotiating these leases and other affairs of the corporation. I wouldn't say that the time and effort was spent during the entire period from 1936 right through the calendar year 1938. Of course, from the year 1936 until the lease was signed for the oil company, his services consisted of whatever was necessary to the upkeep of the orange grove and trying to find finances for payment of these various items coming up, and so forth. He and I were talking about it considerably all during that time, what to do with the company. Some of the services for which this compensation was paid were rendered during the period from

(Testimony of Walter R. Hilker.)

July 1, 1937, to June 30, 1938. I do not recall without seeing the minutes, whether during that period, July 1, 1937, to June 30, 1938, there were two meetings of the Board of Directors of the company at which the disposition of the company's oil rights was discussed. That payment to the president covered anything that he may have done for the corporation, and some of the compensation that the president [81] obtained was rendered in connection with matters that were taken up at these two meetings of the Board of Directors.

Referring to Petitioner's Exhibits 37 and 51, being statements of assets, liabilities and capital of the San Fernando Mission Land Company as of July 1, 1937, and June 30, 1938, respectively, it is correct that in each of these Exhibits the reserved oil rights are placed at a value of one dollar. This is purely a nominal value. A speculative value. There was no particular effort to assign any value. Just to get it on the balance sheet. This was merely an attempt to put something on the balance sheet that recognized the possible existence of the rights. The company didn't know that they were worth anything.

Q. The company couldn't tell just what they were worth? A. No.

When I testified that certain real estate taxes were not paid, my testimony related both to the orange grove and to the hill lands. The State took over the orange grove but we subsequently redeemed

(Testimony of Walter R. Hilker.)

the hill lands. My testimony as to unpaid taxes is in no way related to the oil rights which were reserved by the company.

Referring to the payment of the bills of the San Fernando Mission Land Company by the Angeles Mesa Land Company. The San Fernando Mission Land Company had no funds with which to pay them, and from time to time we would make [82] miscellaneous advances or loans and pay bills. It is not true that the same people owned both land companies. The Angeles Mesa Land Company was interested in the San Fernando Mission Land Company because the Angeles Mesa Land Company was a 10 percent stockholder and had the management of the affairs of the corporation.

The \$1,500.00 loan by the San Fernando Mission Land Company to the Angeles Mesa Land Company has not yet been repaid. But, the loans by the Angeles Mesa Land Company to the San Fernando Mission Land Company have been repaid.

When I testified that the only reason that the corporation was not liquidated or dissolved was that it was difficult to distribute among the stockholders the orange grove and the hill lands, it was not a fact that the corporation had oil rights of potential value that were also a factor in the non-dissolution of the company. It didn't occur to anybody at that time that there was any value to the oil rights. By "at that time", I mean during the period prior to June 30, 1938.

(Testimony of Walter R. Hilker.)

Referring to Petitioner's Exhibit 50, it is true that such oil rights were sold or released to John O'Melveny for \$1,180.00.

Redirect Examination

By Mr. Tolin:

Referring to an oil lease on the part of Sunshine Ranch which I testified was executed to one William [83] McClintock. This lease was never delivered to Mr. McClintock. It was delivered to an escrow. It came back to the San Fernando Mission Land Company. In other words, the deal was never consummated.

As far as I know, the San Fernando Mission Land Company never had a survey or study made by experts to determine whether there was a probability or likelihood of there being oil or minerals upon any of this land respecting which the mineral rights and oil rights were reserved. I don't recall that they were ever acquainted with the results of any survey that might have been made by any other person prior to the close of the fiscal year ending June 30, 1938. I don't know why the corporation reserved the oil rights. It was before my time. The corporation has never, down to the present day, received royalties on oil produced on this land. Prior to June 30, 1938, there were no releases of oil reservations or transfers of oil reservations to persons other than the persons who already owned rights to the land.

(Testimony of Walter R. Hilker.)

During the history of the company, insofar as I was connected with it, down to June 30, 1938, there were four or five quitclaims issued to the surface owners for releases of the oil reservations. There were no quitclaims of oil reservations that were issued to persons other than surface owners. During the period that commenced on the 1st of January, 1931, and ended on June 30, 1938, there were two releases of oil reservations to surface owners. One was to [84] the Tidewater Associated Oil Company, and the other was to John O'Melveny. We received \$7,500.00 for the release to the Tidewater Oil Company, and we received \$1,180.00 from John O'Melveny. That is all that occurred in that period of seven and one-half years.

Recross Examination

By Mr. Taylor:

When I said that the Sunshine deal was not consummated and that the papers were returned from the escrow—I don't know the exact details, but from what I do know about it, it was because McClintock defaulted in the terms of the lease.

REUBEN INGOLD

a witness called on behalf of the petitioner, was duly sworn and testified as follows:

Direct Examination

By Mr. Tolin:

I am President of the Los Angeles Investment Company engaged in real estate development and investments. I am President of San Fernando Mission Land Company. I first became President of that company in the latter part of 1936. I first became acquainted with its affairs in the latter part of 1935. In 1935, on Mr. Jeffries' death, I became president of the Angeles Mesa Land Company, and in investigating the affairs of that company I learned that the San [85] Fernando Mission Land Company owed the Angeles Mesa Land Company a substantial amount of money, and that the Angeles Mesa Land Company was also the owner of 10 percent of the outstanding stock of the San Fernando Mission Land Company; and in making my investigation to find out how we could collect in the Angeles Mesa Land Company the money that the San Fernando Mission Land Company owed us, I learned of its affairs. I went very thoroughly into the matter of undertaking to do something by way of collection of the money that was owed to it.

I found that there were seven directors authorized, only three of whom were alive. I interviewed those three directors consisting of Mr. Sartori, Mr. Hellman and Mr. Harry Chandler. Mr. Sartori and Mr.

(Testimony of Reuben Ingold.)

Hellman were perfectly willing for their part to pay their proportion of the obligation due the Angeles Mesa Land Company, and they said so. I suggested to both of these gentlemen that it seemed to me proper that an assessment be levied on the stock of the San Fernando Mission Land Company for the purpose of raising the money to pay its creditors, its creditor being the Angeles Mesa Land Company. Mr. Sartori was perfectly willing that the assessment be levied and so stated. But he wanted me to so levy the assessment that action against the stockholders would be restricted to forfeiture of their stock. He wanted to make an outside situation whereby he would pay his proportion of the debt but didn't want to have [86] the Articles of Incorporation amended so as to provide for assessment privileges that would go beyond the forfeiture of the stock.

Mr. Sartori was vice-president of the corporation, although he denied it. The minutes showed that he was vice-president, but he had no recollection of that.

Mr. Hellman was not an officer. He was a director only.

There was no president of the corporation at that time. The presidency had become vacant upon the death of Mr. Jeffries.

At the suggestion of Mr. Sartori and Mr. Hellman, I secured proxies from a sufficient number

(Testimony of Reuben Ingold.)

of stockholders to call a special meeting of the stockholders, at which time a board of directors was elected. I was present at the meeting. I conducted the meeting. There were several shareholders there by proxy, more than an amount sufficient to hold the meeting. And I recollect of only two or three stockholders being present other than by proxy. At that meeting there was an election of a new board, as shown by the minutes. The Board of Directors meeting following that stockholders' meeting elected me president.

I don't recollect whether I inspected the properties of the San Fernando Mission Land Company after I was elected president or before. But I did sometime in that interim inspect the properties. As far as I can remember, it was [87] within a year before the time that I was elected president.

As I recollect, there were two properties, one a piece of hill land undeveloped, and one orange grove in very bad condition. I learned there were some mineral interests acquired or held through reservation on certain properties that the corporation had sold many years before.

Upon becoming president I assumed personal charge of the affairs of the corporation. I am familiar with the affairs of the corporation and the book of minutes of the corporation from the time that I became president down to the present day.

My plans for the company during that period from, say, July 1, 1937, to June 30, 1938, was to

(Testimony of Reuben Ingold.)

liquidate the company's indebtedness and dissolve as rapidly as possible after disposal of its assets. The corporation during that period had no other activities which had any other purpose.

I do not recollect any change in the condition of the company's assets as I found them at the time I came into the company in the latter part of 1936 and on July 1, 1937. Between the time that I came into the company in 1936, and June 30, 1938, there were two transactions which constituted a change in the condition of the company's assets. One was the sale of a piece of property, a small part of the hill property. One was the disposal of the reservation to the fee owner of the property in connection with the Tidewater Associated Oil Company. [88]

With respect to the orange grove that I described as a run down orange grove which was there when I took over. We attempted to find a solution to that problem but finally determined to abandon the grove and have the trees taken off. I believe that determination was reached in the fall of 1937.

Regarding the plan about which I have testified, under which assessments were to be made upon the shareholders, and Mr. Sartori and Mr. Hellman were to pay something to liquidate the indebtedness of the corporation. That plan did not go into effect. It wasn't necessary to levy the assessment because soon after that meeting was held, we were approached by the Tidewater Associated Oil Com-

(Testimony of Reuben Ingold.)

pany to purchase from us the reservation on their fee property. That was property that had originally been owned by the corporation and title had finally come to the oil company except for the reserve oil interests. I believe they proposed to us and paid \$7,500.00 for the oil interest.

After my first inspection I saw the orange grove again. It gradually got worse. We had another worry regarding that grove, and that is that the Angeles Mesa Land Company has a 70-acre grove immediately adjoining it across the street. We were fearful that with the further contamination of the San Fernando grove that the Angeles Mesa grove may be contaminated. That I think resulted in our final decision to have the trees taken out.

The Angeles Mesa grove was partially Navels, [89] partially Valencias and partially lemons. We found that the area was not adapted to the successful growth of Navel oranges. We finally had the Navels taken out of the Angeles Mesa grove as well as the San Fernando grove.

I have attended all the meetings of the directors between the time of my election and June 30, 1938.

Referring to Exhibit No. 2 which appears to be the minutes of a meeting of the directors of San Fernando Mission Land Company held under date of September 14, 1936, and more particularly to the reference in these minutes to sale of oil reservations, Lot 6 of Tract No. 10422 to the Associated

(Testimony of Reuben Ingold.)

Oil Company for \$7,500.00. I can't remember the exact date when the subject of that sale was first brought to my attention, but it was sometime within 30 or 45 days prior to this meeting. This came up after I had made my tentative arrangement with Mr. Sartori and Mr. Hellman. It was the receipt of this \$7,500.00 from that source which restored the corporation somewhat to its feet financially and made it unnecessary to levy the assessment.

In these same minutes there is some matter relative to authority to execute and deliver quitclaim deeds covering properties reserved for road purposes. The Title Guarantee & Trust Company owned certain land in the San Fernando Valley. That property had originally been sold by this company, and we had retained certain rights under road easements, and the title company wanted us to quitclaim from [90] time to time the rights that we had retained so that they could clear up the title to the property.

I asked authority of the Board to do that because we had requests from the title company to make such a quitclaim. We made that quitclaim and the San Fernando Mission Land Company received no consideration whatever for it.

There appears also in these minutes reference to an oil and gas lease to the Progressive Syndicate, a trust estate, as lessee, which matter was presented to the Board for its consideration.

There had been some negotiations with individu-

(Testimony of Reuben Ingold.)

als representing the Progressive Syndicate inquiring as to the possibility of leasing certain areas of the Sunshine Ranch, and I reported that to the Board and I think it was decided at that time that no lease would be entered into, and I notified the Progressive Syndicate or the people that I had been negotiating for their account, to that effect.

There is also some reference in these minutes to the extension of Laurel Canyon Boulevard through the orange grove. The City of Los Angeles had filed a condemnation to build Sepulveda Boulevard through the hill land, not through the orange grove, and had attempted to make some settlement with us regarding the lands that they had taken under this right of eminent domain. We couldn't agree at that time as to the amount of damages that we were entitled to, although at some later date we did come to an agreement and settled [91] it out of court.

On the Sepulveda condemnation I think we received around \$2,000.00. That was at a later date, however.

There is a reference in the minutes to a letter from the California Trust Company relative to oil rights reserved by the San Fernando Mission Land Company. The California Trust Company held or owned the surface rights to part of the Sunshine Ranch, which is a part of the 16,000 acres originally owned by this company, and the properties that they owned were incumbered by our reservation, oil rights, oil reservation. And they had been for some

(Testimony of Reuben Ingold.)

years attempting to clean up their title to that property, and this letter has reference to a request on their part asking us to give them a quitclaim deed to the mineral reservations so that they could clean up the title.

I don't remember that they offered us any consideration. It was my memory that they asked us to do it just to be good fellows, and we refused. That is the reservation on the 3,000 acres of the Sunshine Ranch. The corporation did not at that time consider that these reservations had any value. It wasn't that we felt that there was any value there by reason of any oil or gas that might be on the property. I think our decision was largely due to the fact that we had been informed that in the past when oil and gas reservations had been released we had been paid for that and that when this property that the California Trust Company [92] owned was originally sold, it was sold at a very low price, and that if they wanted the reservations released they should pay us for that purpose.

Referring to Exhibit 24, being minutes of special meeting of the board of directors of San Fernando Mission Land Company, held on the 10th day of November, 1937, and in particular to the reference to an oil lease on the part of the Sunshine Ranch to one William McClintock. I didn't meet Mr. McClintock in those negotiations at all. I did all of our negotiating with Mr. Freeman, an attorney representing Mr. McClintock, and the contract that

(Testimony of Reuben Ingold.)

Mr. McClintock had with the San Fernando Mission Land Company was through Mr. Freeman.

Mr. Freeman represented that he had a client by the name of McClintock who wanted to do a little oil speculating and wanted to drill a well on some of our property. I had checked Mr. McClintock and found that he was responsible. However, I had had enough experience in the past with oil leases to know that it isn't desirable to give a lease to any Tom, Dick or Harry, and expect performance; that the smart thing to do was to place the lease in escrow, and if they didn't perform within a due time to have the right to withdraw the lease from escrow and terminate it, and in that way not tangle up the title to the property. So I insisted in these negotiations that the lease be placed into escrow, the lease to be released from escrow when Mr. McClintock [93] had actually started to drill a well. The corporation received no consideration whatever for the execution of that lease and the placing of it in escrow. The corporation received no consideration whatever from McClintock in that transaction. The lease was never actually delivered to him.

In the minutes of the corporation under date of March 16, 1938, being Exhibit 25, there is a reference to an oil lease to one Howell. I represented the San Fernando Mission Land Company in some dealings with Mr. Howell. Mr. Howell, whom I had known for some time, asked for an oil lease on

(Testimony of Reuben Ingold.)

certain of the San Fernando Mission Company's mineral rights, and after some negotiation I told Mr. Howell that I would recommend to our board a lease with him for certain of those rights covering such properties, and at this meeting I did recommend to the board that we grant Mr. Howell a lease under certain terms and conditions, and was authorized to do so. No consideration was received by the corporation from Mr. Howell. He was to have six months without the payment of rental, and after six months he was to pay a dollar per acre every three months as rental for a continuation of the lease. That lease was executed, and it was delivered to Mr. Howell. He has made payments and is still making them. He was required under the lease to do drilling.

Other than the lease which has been introduced in evidence, there was no other contract with Mr. Howell relating to that transaction. Mr. Howell did not start to do any [94] drilling on the property so leased to him prior to June 30, 1938, nor did the corporation receive any information prior to the 30th day of June, 1938, from Mr. Howell or anyone else, that Mr. Howell intended to do any drilling on the property.

We have changed the terms of the lease we granted Mr. Howell at that time, subsequently, and have also granted certain reductions of rent. This was done subsequent to the 30th day of June, 1938. The lease as it stands in evidence is the only agree-

(Testimony of Reuben Ingold.)

ment of any kind with Mr. Howell prior to that date of June 30, 1938.

There is reference in these minutes, Exhibit 25, to the orange grove property. We were requested by the City of Los Angeles to grant a right of way through the orange grove property so that they could connect Laurel Canyon Boulevard with Sepulveda Boulevard. The corporation did not receive any consideration in this connection, although we made our deed conditional that the road would be built out of gas tax funds and not as a lien against the property.

The minutes of certain meetings of directors, about which I have testified, were the only meetings of the directors held between the time I became president and the 30th day of June, 1938, and as far as I can remember, these minutes reflect all the transactions that were had by the corporation during that time, other than the details that are reflected by the books of the corporation.

I know Mr. Hilker who testified here. He was in [95] charge of the books. They have come to my attention, and so far as I know they are correct.

I hold the privilege of practice before the Treasury Department of the United States. I have been an accountant for many years, as well as president of the Los Angeles Investment Company and several other corporations.

I engaged in income tax practice from 1918 to 1926. It was quite an extensive practice and not occasional.

(Testimony of Reuben Ingold.)

I was consulted at the time the San Fernando Mission Land Company fixed its declared value for 1938 capital stock for tax purposes. The return was filed, I believe, in July of 1938. The value was fixed at One Dollar.

I knew at that time the effect of a low declared value for capital stock purposes. I knew the result of declaring too low a value, that is, a value not commensurate with the real worth. I did not know the corporation was going to have a substantial income for the year 1938 at the time I authorized the declaration for capital stock tax purposes. If I knew, I would not have fixed a zero value.

I am familiar with the practice of land owning and selling companies with respect to oil reservations, meaning companies of that sort here in Southern California.

I can speak more directly of the practice with respect to the reserving of oil rights and mineral rights that we follow in the Los Angeles Investment Company. As a precautionary measure we withhold all mineral rights on any [96] property that we sell. There are two reasons for this: One is that in most cases your property is residential and you restrict the property against drilling for oil. We found out the best restriction and the safest precaution is to withhold the oil rights so that there is no incentive on anybody's part to drill.

Since the 30th day of June, 1938, we entered into some transaction with the Tidewater Associated Oil

(Testimony of Reuben Ingold.)

Company regarding the oil rights that had been reserved by the San Fernando Mission Land Company. I think it was the 26th of August, 1938. That is the date which the lease bears (Exhibit 30).

The first time that we had any knowledge that the Tidewater Associated Oil Company was interested in acquiring the oil rights on that land was on the 19th of August, 1938. Prior to that day, we had done nothing to find a purchaser or a person to take a lease on those particular oil rights.

On that day, Mr. Hilker, Mr. Hennessy and Mr. Gray—Mr. Hennessy and Mr. Gray were representing the Tidewater Associated Oil Company—called at my office and discussed the leasing of a part of our property to the Tidewater Associated Oil Company. All these parties were present at the conference. Mr. Gray, who was in charge of Tidewater leasing activities—Mr. Hennessy being their local attorney of the land and lease department—stated that they wanted to negotiate a lease on some property that we had the oil reser- [97] vation, and which was immediately adjoining the property that we had previously quit-claimed the reservation to them, and after some negotiation we arrived at a value for a lease on our property. We called it a bonus. We agreed to call a meet- in of our directors for the purpose of considering that.

Neither I nor anyone else under my direction for the San Fernando Mission Land Company made any investigation to determine whether there actually

(Testimony of Reuben Ingold.)

was oil in that land. We had made no inquiry whatever other than that which we made of the Tidewater Associated Oil Company at that conference.

The whole transaction was written into this one lease, Exhibit 30.

Mr. Gray was down here from San Francisco and stated that he would like to have it come to a conclusion before he left Los Angeles for San Francisco. I believe that we immediately held a directors meeting to consider the subject. We did not at that time know that the Tidewater Associated Oil Company had any showings of production on any of their land in that locality. On June 30, 1938, we had no knowledge or word that the Tidewater Associated Oil Company had any showing of production on their land in that locality.

Referring to Exhibit 26, the minutes of the meeting of the board of directors of the San Fernando Mission Land Company, held August 26, 1938, where there appears a refer- [98] ence to oil lease on Lot 7, Tract 10422, to Associated Oil Company. The transaction there reported is the same one concerning which I have just testified.

The consideration which we received from the Tidewater Associated Oil Company for this lease which was executed on the 26th day of August, 1938, other than the \$10.00 consideration recited in the lease, was \$20,000 in cash, and a speculative consideration of certain additional moneys to be paid out of oil, if, as, and when discovered.

(Testimony of Reuben Ingold.)

There has been no oil production whatever on the land. The \$20,000.00 was received.

The lease also provides for deferred rental in case the drilling wasn't started within a year, and the Tidewater Associated paid us that deferred rental at the rate of \$500.00 a month for a number of months.

None of this money was received or contracted to be received prior to the 30th day of June, 1938.

We had no inkling whatsoever that there would be transactions with the Associated Oil Company or any other person or firm respecting these oil reservations prior to the 30th day of June, 1938, or on that day itself.

I know Mr. Robert V. New. I have had some transactions with Mr. New concerning oil reservations that are owned by the San Fernando Mission Land Company.

I recognize Petitioner's Exhibit 26 as a copy of the minutes of the meeting of the board of directors of San [99] Fernando Mission Land Company held August 26, 1938.

In my transactions with Mr. New I entered into an agreement with him respecting services which he rendered or was to render the petitioner corporation. I discussed it with Mr. New prior to the board meeting of August 26, and after the board meeting I entered into an agreement with him. My first discussion with Mr. New was subsequent to the 19th of August, 1938.

(Testimony of Reuben Ingold.)

Other than as is set forth in these minutes (Exhibit 26), the San Fernando Mission Land Company did not at any time have any agreement with Mr. New to negotiate an oil lease on Lot 8 of Tract No. 10422.

This resolution which appears on pages 2 and 3 of Exhibit 26, is the only and complete agreement of the petitioner corporation with Mr. New.

I can't say that Mr. New approached us. I think I approached him in connection with the Associated lease. I asked Mr. New, who has been in the oil business most of his life, and whom I have known for some time, just exactly what provisions we should put in the lease if the board of directors felt that a lease was in order. This was subsequent to August 19, 1938.

I found Mr. New very helpful in giving me ideas how to protect the company in preparing the lease and in negotiating the various terms of a proposed lease. Naturally, in talking to him about it I exposed our negotiations with [100] the Associated Oil Company. He told me at one of those meetings that I had with him, all within a period of a few days, that he felt that if he was given a contract to lease some of our other property that he could among his friends in the oil industry secure a better lease than we could, not being acquainted in the oil industry. And these negotiations with Mr. New finally resulted in the agreement that I asked the board to approve on the 26th of August.

(Testimony of Reuben Ingold.)

Under this agreement which is set forth in the minutes of the directors meeting which appears as Exhibit 26, Mr. New secured a lease with the Shell Oil Company by which they paid us \$200.00 an acre bonus for a two-year lease covering nearly 400 acres of ground on which we had the oil reservations.

The copy of Exhibit 29 which I am being shown, which is an Oil and Gas Lease between San Fernando Mission Land Company, a California corporation, and Shell Oil Company, a California corporation, is a copy of the lease that Mr. New negotiated with the Shell Oil Company on our behalf.

The lease itself was finally determined by myself and Mr. Emerson. But in all essentials this lease is the outgrowth of Mr. New's negotiations.

I can't remember the exact date when negotiations were first commenced with the Shell Oil Company or any other company, with respect to the oil reservations that are leased in this lease, Exhibit 29, because Mr. New had the [101] preliminary negotiations with the Shell Oil Company.

I think he also talked with other companies, but it was after the date of the execution of the lease with the Tidewater Associated Oil Company.

Mr. New received compensation for the services which he rendered in connection with the lease transaction which finally came to a conclusion in the execution of the Oil and Gas Lease which is Exhibit 29, exactly on the basis outlined in the minutes of the board meeting of August 26th. He received nothing for the first \$25.00 an acre of bonus and 50

(Testimony of Reuben Ingold.)

percent of all bonus paid to the company in excess of \$25.00 an acre. I think some thirty-three thousand odd dollars total compensation.

On several occasions I have had transactions for the negotiation of oil leases, either for myself or other corporations, with persons other than Mr. New, who are in the line of business of negotiating oil leases.

There isn't any ordinary method of figuring the amount of compensation that is paid for this type of representation.

The basis of the compensation to Mr. New is set forth in the agreement which is a resolution in the minutes of that board meeting. The compensation there stated is the only compensation that he received.

(There was offered and received in evidence, a check, which was marked Petitioner's Exhibit No. 52, and made a part of this record. [102])

This check is the check by which Mr. New was paid. The amount is \$33,306.88.

At that time there were no further payments received by the petitioner corporation under the Shell lease, other than the amount of \$76,130.00. There were no further payments required to be made under that lease.

The lease was extended after the two years had elapsed on the payment of additional deferred drill-rental. That original rental was not a payment

(Testimony of Reuben Ingold.)

that was agreed to be paid in the original lease. It was arrived at by subsequent negotiations. Under the original lease there were no other sums to be paid other than the \$76,130.00, except the royalty in case of discovery of oil. No oil has been discovered to date. So that the sum of \$76,130.00 is the only money that San Fernando Mission Land Company has received under that particular lease.

The San Fernando Mission Land Company included that sum of \$76,130.00 as income in its return for the year 1938.

The corporation did not owe Mr. New any other money after payment to him of the sum that is represented by the check as it has been introduced in evidence, namely, \$33,306.88. Mr. New rendered all of the services which he was to have rendered the corporation when that lease with the Shell Oil Company was signed, and when the bonus of \$76,130.00 was actually paid. [103]

In my opinion the payment of \$33,306.88 to Mr. New was a reasonable fee commensurate with the services he rendered. I told Mr. New that we wouldn't expect to pay any brokerage or commission where the bonus was \$25.00 an acre or less. We were perfectly willing to pay 50 percent of any excess over \$25.00 an acre that we could get as a bonus. The property that was leased to the Shell was considerably further away from any development, from any property previously leased to the

(Testimony of Reuben Ingold.)

Associated, and it seemed to me that \$25.00 an acre was a reasonable bonus, and consequently I thought that if a man could develop a lease providing for a heavier bonus than that he was entitled to be very substantially compensated. I stated this substantially to the board of directors at the time they were asked to adopt the resolution respecting the employment of Mr. New which appears in Exhibit 26.

Mr. New was in no way interested in San Fernando Mission Land Company, not as a shareholder, nor an employee.

We had Mr. George Emerson assist in the preparation of the Shell Oil Company lease. He rendered a charge of \$250.00 for that service.

The statement you show me on the billhead of George H. Emerson, attorney at law, is the statement that Mr. Emerson rendered us for services in connection with the preparation of the Shell lease.

Check No. 6862 of the San Fernando Mission Land [104] Company which you show me, payable to George H. Emerson, in the sum of \$250.00 is the check with which his statement was paid.

(The said statement and check were offered and received in evidence as Petitioner's Exhibits Nos. 53 and 54, respectively, and made a part of this record.)

In my opinion the fee charged by Mr. Emerson in that connection was very reasonable and commensurate with the services rendered. The fee was

(Testimony of Reuben Ingold.)

paid entirely for services in connection with that particular lease. He had completed the services at the time his statement was rendered.

I have received compensation from the San Fernando Mission Land Company for my services in connection with its affairs. I can't tell exactly from memory, but I know there was one check for \$5,000.00 in December of 1938. This was the only payment prior to the closing of the calendar year 1938. At the end of the calendar year of 1938, I had no uncollected or accrued salary or commission or other compensation due me. This \$5,000.00 was paid in December of 1938. As to the period of time that I rendered these services for which I was compensated by the \$5,000.00, I don't remember that it was supposed to cover any particular length of time, except that the directors had in mind that it should cover all services rendered by me up until December 31, 1938, including a payment for my services in my original investigation that led to the election of a board of directors, and [105] the carrying on of the company from that time on, including the Associated and the Shell negotiations up until December 31st. This \$5,000.00 was the only compensation up to that time. I had not otherwise been compensated for my services in calling that meeting of shareholders and getting the company started again. Nor have I otherwise been compensated for my services in connection with the orange grove. When

(Testimony of Reuben Ingold.)

I accepted the \$5,000.00 I had in mind suggesting to the directors that when they should consider the question of compensation that it was to cover all services rendered by me up until December 31, 1933, that is, from the time that I took the office of president, and even before. The amount was not fixed by me. It was fixed by the board and I was asked if that was satisfactory. It was entirely satisfactory. I thought they were very liberal.

When I fixed the value of the stock at zero, I couldn't see that there was a possibility of the corporation having any income, and feeling that way I felt that there would be no penalty in valuing the stock at zero.

Prior to June 30, 1938, there were no preliminary conversations at all, or correspondence, respecting these oil reservations which later became the subject of the Tidewater Associated Oil lease and the Shell lease.

Cross Examination

By Mr. Taylor:

It is correct that the company had reserved oil [106] rights in approximately 3,000 acres of land prior to July 1, 1937, and which reservation continued throughout the calendar year 1938. And the company had reserved oil rights in that many acres of land, in excess of 3,000 acres.

As to why the oil companies were interested in leasing the company's property for oil development

(Testimony of Reuben Ingold.)

purposes, and as to whether or not there was a leasing program going on throughout the area, or whether it was restricted to the company's property, at that time we didn't know what was going on. We learned shortly after that. But at that time we didn't know what was going on. When I say "at that time", I mean at the time when we were first approached by the Associated Oil Company.

I don't know whether at the time when we entered into a lease on the 16th day of March, 1938, Petitioner's Exhibit 28, the oil companies, or any oil companies, were making efforts to lease properties other than the petitioner's herein for oil development purposes.

It is correct that I testified that the lease of March 16, 1938, petitioner's exhibit 28, fell through because of the default of Mr. McClintock, the lessee. The lease and escrow agreement provided that he would, within 90 days, actually start a well on the property. And if he had started a well on the property, under the escrow agreement he was to be furnished a copy of this lease that was signed. He did not start a well. He was to be furnished [107] with a copy. Both copies were in escrow, our copy and his copy. The lease was to be regarded in effect and it would be delivered to him if he had actually spudded in a well. I mean, he was to be furnished with a copy of the lease. It

(Testimony of Reuben Ingold.)

was in duplicate. It was to be a common and effective lease but only in case he spudded in.

The Howell lease, petitioner's Exhibit 28, entered into March 16, 1938, was consummated. It was carried through. The only purpose of our activities between July 1, 1937, and June 30, 1938, was with the intention of liquidating; at that time it was the only purpose of our activity. As to whether we entered into the Howell lease in pursuance of that purpose, the answer is Yes and No. It just happened to come up that way. We had an opportunity of leasing the property on a lease that provided for rentals for six months, and it looked to us like it was the proper thing to do. It hadn't changed our original purpose of liquidating as rapidly as possible.

I wouldn't say that we put off that purpose when we had the chance to make money through the execution of the Howell lease. We would still continue to sell whatever assets we had. The purpose of our entering the Howell lease was that we hoped that we would make money. In case oil was discovered, the Howell lease was to continue for a period of twenty years. I can't say that our purpose in liquidating was in any way aided by our entering into the Howell lease. If drilling operations were successful under the Howell lease [108] we could have then determined a value or distributed the oil rights to our shareholders probably easier

(Testimony of Reuben Ingold.)

than just distribute oil rights where no value existed behind them.

I first contacted Mr. New on the 20th or 21st or 22nd of August. I can't say the exact date. It was after the 19th, however. In 1938.

WALTER R. HILKER

a witness on behalf of Petitioner, resumed the stand and was further examined and testified as follows:

Direct Examination

By Mr. Tolin:

It was on August 19, 1938, that I first had any communication with the Tidewater Associated Oil Company, or any of its agents, representatives or employees, with respect to their negotiating an oil or gas lease. Mr. Gray and Mr. Hennessy of the Tidewater came down to my office, and after talking to them for a moment or two I saw that it was a matter for Mr. Ingold to hear. So I immediately telephoned him and the three of us went to his office and discussed it. That was the first that I knew of any desire on the part of anyone to negotiate such a lease.

Cross Examination

By Mr. Taylor:

I think the Shell Oil lease, petitioner's Exhibit 29, covered any of the oil rights that were covered

(Testimony of Walter R. Hilker.)

under the [109] lease which Mr McClintock failed to consummate. I wouldn't say that the Shell lease covered all the property covered by the McClintock lease. Part of it.

The San Fernando Mission Land Company never received any bonus or other payment as a result of the McClintock lease.

(At the conclusion of this testimony, the following proceeding among others took place.)

Mr. Tolin: That is all.

That closes our testimony, your Honor.

We note that Exhibits 39 to 49, inclusive, have been introduced but that we do not have copies, and we request that the exhibits might be withdrawn for the purpose of having copies made, the exhibits then to be filed wherever your Honor indicates.

The Member: Is that the correspondence?

Mr. Tolin: Yes, it is the correspondence, and the franchise tax returns.

The Member: You may withdraw them and substitute copies that are submitted to Mr. Taylor, so that he may register any objection as to the copies.

Mr. Taylor: Will you furnish me copies also?

Mr. Tolin: Certainly.

That might not be done before the Board has closed its calendar here. To where should we send our copies? [110]

The Member: If that occasion arises send them

to the Board in Washington. I hope, however, they will be given to the Clerk before we leave.

Mr. Tolin: We will undertake to do so. We know your Honor is expeditious, and we are not certain we can comply.

Mr. Taylor: Your Honor, I have introduced several income tax returns and capital stock tax returns. May they be withdrawn in accordance with the usual process and photostats substituted?

The Member: Full-sized photostats may be substituted. Has the Respondent any evidence?

Mr. Taylor: The Respondent rests, your Honor.

The Member: The case is submitted, and you may file your briefs in accordance with the rule.

(Hearing concluded.)

The above and foregoing is all the evidence introduced at the trial of said cause and all proceedings had at the trial thereof.

Petitioner and Appellant prays that the above Statement of Evidence be settled, allowed and approved by a member of the Board of Tax Appeals, as a true, full and correct and complete statement of all the evidence taken, for use on the appeal taken to the United States Circuit Court of Appeals for the Ninth Circuit. [111]

Dated: Sept. 4, 1942.

HARRY GRAHAM BALTER,
639 South Spring Street, Los
Angeles, California, Attor-
ney for Petitioner and Ap-
pellant.

All exhibits to be forwarded to Circuit Court in original form pursuant to its order dated 9/10/42.

[112]

Service of the foregoing Statement of Evidence and a receipt of a copy thereof, this 15 day of September, 1942, is hereby admitted and acknowledged.

(S) J. P. WENCHEL,

Chief Counsel, Bureau of Internal Revenue.

It is hereby stipulated that the above and foregoing Statement of Evidence is true and correct and may be approved by a member of the United States Board of Tax Appeals without notice.

Dated this 4th day of September, 1942.

HARRY GRAHAM BALTER,

Counsel for Petitioner.

(S) J. P. WENCHEL,

Chief Counsel, Bureau of Internal Revenue.

[Endorsed]: U.S.B.T.A. Filed Sept. 15, 1942.

[113]

[Title of Circuit Court of Appeals and Cause.]

ORDER TO SEND UP ORIGINAL EXHIBITS

On application of Harry Graham Balter, Counsel of record for Petitioner San Fernando Mission Land Company, and good cause appearing therefor:

It Is Ordered, that in addition to the Transcript of Record on Appeal in this action, the Clerk of the United States Board of Tax Appeals, at Washington, D. C., transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, the following Exhibits in their original form, referred to and designated in the Statement of Evidence in this action, to be by him safely kept and returned to the Clerk of the United States Board of Tax Appeals upon the final determination of this action in said United States Circuit Court of Appeals for the Ninth Circuit, namely: All of the Exhibits offered and received in Evidence as Petitioner's Exhibits Nos. 1 to 54, inclusive; and all of the Exhibits offered and received in evidence as Respondent's Exhibits Nos. A to M, inclusive.

It Is Further Ordered, that within such time as he may deem reasonable, the Clerk of this Court retransmit to the Clerk of the United States Board of Tax Appeals, such of the Exhibits as the Chief Counsel for the Bureau of *Internal desires* for examination and inspection in connection with the

preparation of the Board in behalf of the Respondent.

Dated: September 10, 1942.

(s) CURTIS D. WILBUR

Judge of the United States
Circuit Court of Appeals
for the Ninth Circuit.

[Endorsed]: Filed Sept. 10, 1942. Paul P.
O'Brien, Clerk.

A True Copy: Sept. 10, 1942.

Attest: [Seal] (s) PAUL P. O'BRIEN,
Clerk.

[Endorsed]: U.S.B.T.A. Filed Sept. 14, 1942.

[114]

United States Board of Tax Appeals

Docket No. 107149

SAN FERNANDO MISSION AND LAND COM-
PANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PRAECIPE FOR RECORD

(Designation of Parts of Record to be Cer-
tified)

To the Clerk of the United States Board of Tax
Appeals:

You are hereby requested to prepare and cer-
tify and transmit to the Clerk of the United States
Circuit Court of Appeals for the Ninth Circuit, at
San Francisco, California, with reference to peti-
tion to review heretofore filed by the Petitioner
in the above cause, a transcript of the record in
the above cause, prepared and transmitted as re-
quired by law and by the rules of said Court, and
to include in said transcript of record the follow-
ing documents, or certified copies thereof, to-wit:

1. The docket entries of all proceedings before
the Board of Tax Appeals.

2. All pleadings before the Board of Tax Ap-
peals, as follows:

(a) Petition and request for redetermination. [115]

(b) Answer of the Respondent.

3. The Memorandum of Findings of Fact and Opinion of the Board of Tax Appeals.

4. The Decision of the Board of Tax Appeals.

5. Petition for Revision and Review.

6. Order Denying Revision.

7. Order Denying Review.

8. Petition for Review and Assignment of Errors filed by the Petitioner in the above case.

9. Notice of filing Petition for Review, and Acknowledgement of Service of said Notice.

10. Substitution of Counsel.

11. Order Enlarging time to file Transcript of Record, etc.

12. Statement of Evidence.

13. Certified copy of Order of United States Circuit Court of Appeals for the Ninth Circuit Sending up Exhibits.

14. This Praecipe and Affidavit of Service by Mail.

(s) HARRY GRAHAM BALTER

639 South Spring Street

Los Angeles, California

Counsel for Petitioner

Copy mailed to J. P. Wenchel, Chief Counsel,
Bureau of Internal Revenue, Sept. 4, 1942.

[Endorsed]: U. S. B. T. A. Filed Sept. 9, 1942.

[116]

[Title of Board and Cause.]

CERTIFICATE OF CLERK TO
TRANSCRIPT OF RECORD

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 116A, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praeceptum in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 17th day of September, 1942.

[Seal]

B. D. GAMBLE,

Clerk, United States Board
of Tax Appeals.

[Endorsed]: No. 10272. United States Circuit Court of Appeals for the Ninth Circuit. San Fernando Mission Land Company, a corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of the United States Board of Tax Appeals.

Filed October 2, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit
Docket No. 10272

SAN FERNANDO MISSION LAND COM-
PANY,

Appellant,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

POINTS ON WHICH APPELLANT INTENDS
TO RELY ON APPEAL AND DESIGNA-
TION OF PARTS OF RECORD WHICH
APPELLANT BELIEVES NECESSARY
FOR CONSIDERATION THEREOF (Rule
19).

In conformity with the provisions of Subdivision
6 of Rule 19 of rules of practice of the Circuit
Court of Appeals for the Ninth Circuit, appellant
sets out:

I.

Points on Which Appellant Intends to
Rely on Appeal

The points on which appellant intends to rely on
appeal are as follows:

1. The Board of Tax Appeals erred in deter-
mining that appellant was subject to excess profits
taxes for the calendar year 1938.

2. The Board of Tax Appeals erred in failing

to find that in the capital stock tax year ending June 30, 1938, appellant was not "carrying on or doing business" within the meaning of the applicable statutes and regulations, and decisions interpreting such statutes and regulations.

3. That the Board of Tax Appeals erred in failing to find that the appellant's activities during the period from July 1, 1937, to June 30, 1938, exclusive, was not the carrying on and doing business for profit, but was, on the contrary, for the purposes of liquidation.

4. That the Board of Tax Appeals erred in misapplying to the facts of the case at bar, the holding of the Supreme Court of the United States in the case of *Magruder vs. Washington, Baltimore, and Annapolis Realty Corporation*, decided April 13, 1942.

5. That the Board of Tax Appeals erred in failing to apply to the appellant the provisions of the exemptions provided for in Article 43(b) of Regulation 64 (1938 edition).

II.

Designation of Parts of Record Which Appellant Believes Necessary for Consideration Thereof

For the consideration of the points on which appellant intends to rely on appeal, it is designated that the entire record as certified to the Clerk of the United States Circuit Court of Appeals of the Ninth Circuit by the Clerk of the United States Board of Tax Appeals be printed, save and except

the original exhibits which by order of court have been transmitted in their original state, for reference and examination by the Court.

HARRY GRAHAM BALTER

Attorney for Appellant

[Endorsed]: Filed Oct. 19, 1942.